

## 16A C.J.S. Constitutional Law II V Refs.

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

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## 16A C.J.S. Constitutional Law II V A Refs.

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### A. General Principles

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## Research References

### A.L.R. Library

A.L.R. Index, Constitutional Law

West's A.L.R. Digest, [Constitutional Law](#) 🔑 2630 to 2632

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## 16A C.J.S. Constitutional Law § 472

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### A. General Principles

## § 472. Vested property, contractual, and personal rights, generally

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### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2630 to 2632

**Property rights arising by way of contract, statute, and other sources, acquired under the existing law and that cannot, as a policy matter, be deprived by a change in the law, are referred to as vested rights.**

Property rights acquired under an existing law that cannot be deprived by a change in the law,<sup>1</sup> without working an injustice, are referred to as "vested rights."<sup>2</sup> Vested rights so completely belong to a person that the law prevents them from being impaired without a person's consent.<sup>3</sup> A vested right is usually a title to the present or future enjoyment of property,<sup>4</sup> such as, for example, a lease of real estate.<sup>5</sup>

Vested rights can arise only from property rights, contract rights, statute, and the operation of law.<sup>6</sup> While, in some cases, it may be held that a vested property right was in fact created by statute,<sup>7</sup> courts have also held that a "vested right" is a right whose existence is not dependent on the common law or statutory law but instead has an independent existence.<sup>8</sup> This is because no person has a vested right in the continuance of the common or statutory law, and hence, a right created solely by statute may generally be taken away by repeal or by new legislation.<sup>9</sup> Under this view, the only "vested" rights that must be protected against statutory or judicial impairment are contract rights, property rights, or other private rights which have become perfected to the

degree that they are not dependent on the existence of a particular provision of the law.<sup>10</sup> A party making the argument that its contractual rights actually arose from a statutory enactment faces a heavy burden since the presumption is that a law is not intended to create private contractual or vested rights.<sup>11</sup> It is for each elected legislature to express the will of the people as it sees fit; the only exception to this rule applies when the legislature intends to confer a vested right on the recipient as it might with respect to a land patent, for example, or if it intends to create a binding contract.

Rights are vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons as a present interest.<sup>12</sup> That right must be immediate,<sup>13</sup> absolute, complete and unconditional, and independent of a contingency.<sup>14</sup> Accordingly, a mere expectancy of future benefit, or a contingent interest in property founded on the anticipated continuance of existing laws, does not constitute a vested right.<sup>15</sup>

### *Appellate review; relevant inquiry in a vested rights appeal.*

An appeals court reviewing a vested rights case must look to the particular facts that shaped the lower court's decision, considering factors such as the nature of the rights, how the rights were affected, and the nature of the public interest furthered by the legislation altering those rights.<sup>16</sup>

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#### Footnotes

- 1 N.H.—*In re Goodlander*, 161 N.H. 490, 20 A.3d 199 (2011).
- 2 Mich.—*Midland Cogeneration Venture Ltd. Partnership v. Naftaly*, 489 Mich. 83, 803 N.W.2d 674 (2011).
- 3 U.S.—*Halbach v. Great-West Life & Annuity Ins. Co.*, 561 F.3d 872 (8th Cir. 2009).  
See also "vested right" under the entry for "right" in Black's Law Dictionary (10th ed.).
- 4 Fla.—*In re Will of Martell*, 457 So. 2d 1064 (Fla. 2d DCA 1984).  
Ill.—*de la Rosa v. Zollar*, 291 Ill. App. 3d 855, 225 Ill. Dec. 820, 684 N.E.2d 811 (1st Dist. 1997).  
Mo.—*Hallmark Cards, Inc. v. Director of Revenue*, 159 S.W.3d 352 (Mo. 2005).  
N.H.—*In re Goldman*, 151 N.H. 770, 868 A.2d 278 (2005).  
N.J.—*D.J.L. v. Armour Pharmaceutical Co.*, 307 N.J. Super. 61, 704 A.2d 104 (Law Div. 1997).  
Or.—*Luthe v. Multnomah County*, 240 Or. App. 263, 246 P.3d 487 (2010).  
Tex.—*Ex parte Kubas*, 83 S.W.3d 366 (Tex. App. Corpus Christi 2002), petition for discretionary review refused, (Nov. 6, 2002).  
Wash.—*Olesen v. State*, 78 Wash. App. 910, 899 P.2d 837 (Div. 2 1995).  
**"Accrued right"**  
An "accrued right" within the constitutional provision concerning the effect of the repeal of a statute may be defined as a matured cause of action or the legal authority to demand redress.  
Okla.—*Mid-Continent Cas. Co. v. P & H Supply, Inc.*, 1971 OK 135, 490 P.2d 1358, 10 U.C.C. Rep. Serv. 1135, 72 A.L.R.3d 1234 (Okla. 1971).  
**Present fixed right of future enjoyment**  
Neb.—*Big John's Billiards, Inc. v. State*, 288 Neb. 938, 852 N.W.2d 727 (2014).  
For a discussion of subsequent changes to the law impairing vested rights, see § 475.
- 5 N.C.—*Mission Hospitals, Inc. v. North Carolina Dept. of Health and Human Services, Div. of Health Service Regulation*, 205 N.C. App. 35, 696 S.E.2d 163 (2010).
- 6 Ga.—*Brown v. City of East Point*, 246 Ga. 144, 268 S.E.2d 912 (1980).  
Minn.—*Ridgewood Development Co. v. State*, 294 N.W.2d 288 (Minn. 1980).  
N.M.—*Pierce v. State*, 1996-NMSC-001, 121 N.M. 212, 910 P.2d 288 (1995).  
Okla.—*Triple D Excavation v. Edwards*, 2003 OK CIV APP 38, 70 P.3d 884 (Div. 2 2003).  
**Presumption**

The presumption is that laws do not create private contractual or vested rights but merely declare the policy to be pursued until the legislature ordains otherwise.

U.S.—*Koster v. City of Davenport, Iowa*, 183 F.3d 762 (8th Cir. 1999).

Ill.—*People ex rel., Sklodowski v. State*, 182 Ill. 2d 220, 230 Ill. Dec. 884, 695 N.E.2d 374 (1998).

**Good faith reliance; substantial change in position**

The doctrine of vested rights applies when a landowner, relying in good faith upon some act or omission of the government, has made substantial changes in position or incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights he has acquired.

U.S.—*Bickerstaff Clay Products Co., Inc. v. Harris County, Ga. By and Through Bd. of Com'rs*, 89 F.3d 1481 (11th Cir. 1996).

**Vested First Amendment rights**

A statute which prohibited the issuance by the county of backdated sign permits for an area no longer within its jurisdiction due to the formation of a new city or annexation did not apply retroactively to divest billboard sign companies of vested First Amendment rights to construct billboard signs in unincorporated areas of the county that either had been subsequently annexed to city or had become incorporated cities.

Ga.—*Fulton County v. Action Outdoor Advertising, JV*, 289 Ga. 347, 711 S.E.2d 682 (2011).

7 Ohio—*Swartz v. Householder*, 2014-Ohio-2359, 12 N.E.3d 1243 (Ohio Ct. App. 7th Dist. Jefferson County 2014).

8 Colo.—*In re Estate of DeWitt*, 54 P.3d 849 (Colo. 2002).

9 N.C.—*Waste Industries USA, Inc. v. State*, 220 N.C. App. 163, 725 S.E.2d 875 (2012).

10 Colo.—*Hickman v. Catholic Health Initiatives*, 2013 COA 129, 328 P.3d 266 (Colo. App. 2013), cert. denied, 2014 WL 2958780 (Colo. 2014).

11 U.S.—*Maine Ass'n of Retirees v. Board of Trustees of Maine Public Employees Retirement System*, 758 F.3d 23, 307 Ed. Law Rep. 617 (1st Cir. 2014); *Schulz v. City of Longmont, Colorado*, 465 F.3d 433 (10th Cir. 2006) (applying Colorado law).

**Statutes fixing salaries and compensation not intended to create private contractual or vested rights**

N.Y.—*Retired Public Employees Ass'n, Inc. v. Cuomo*, 123 A.D.3d 92, 995 N.Y.S.2d 757 (3d Dep't 2014).

**Intention of legislature to create a vested right as a critical factor**

U.S.—*Village of Rosemont v. Jaffe*, 482 F.3d 926 (7th Cir. 2007).

12 Ark.—*Jones v. Cheney*, 253 Ark. 926, 489 S.W.2d 785 (1973).

Cal.—*Standard Oil Co. v. Feldstein*, 105 Cal. App. 3d 590, 164 Cal. Rptr. 403 (1st Dist. 1980).

Conn.—*A. Gallo and Co. v. Commissioner of Environmental Protection*, 309 Conn. 810, 73 A.3d 693 (2013), cert. denied, 134 S. Ct. 1540, 188 L. Ed. 2d 581 (2014).

Kan.—*Kansas Public Employees Retirement System v. Reimer & Koger Associates, Inc.*, 261 Kan. 17, 927 P.2d 466 (1996).

La.—*Sawicki v. K/S Stavanger Prince*, 802 So. 2d 598 (La. 2001).

N.Y.—*Christian v. Ontario County*, 92 Misc. 2d 51, 399 N.Y.S.2d 379 (Sup 1977).

**Clear present interest or right**

Kan.—*Farmland Industries, Inc. v. Kansas Corp. Com'n*, 29 Kan. App. 2d 1031, 37 P.3d 640 (2001).

13 Ariz.—*State v. Estes Corp.*, 27 Ariz. App. 686, 558 P.2d 714 (Div. 2 1976).

Neb.—*Big John's Billiards, Inc. v. State*, 288 Neb. 938, 852 N.W.2d 727 (2014).

N.Y.—*Gleason v. Gleason*, 26 N.Y.2d 28, 308 N.Y.S.2d 347, 256 N.E.2d 513 (1970).

Pa.—*J.R.W., Inc. v. Manchester Borough Council*, 148 Pa. Commw. 238, 610 A.2d 1078 (1992).

14 Ill.—*White v. Sunrise Healthcare Corp.*, 295 Ill. App. 3d 296, 230 Ill. Dec. 197, 692 N.E.2d 1363 (2d Dist. 1998).

Ind.—*Foley v. Consolidated City of Indianapolis*, 421 N.E.2d 1160 (Ind. Ct. App. 1981).

Kan.—*Vaughn v. Nadel*, 228 Kan. 469, 618 P.2d 778 (1980).

La.—*Church Mut. Ins. Co. v. Dardar*, 145 So. 3d 271 (La. 2014); *Smith v. Board of Trustees of Louisiana State Employees' Retirement System*, 851 So. 2d 1100 (La. 2003).

Minn.—*Ridgewood Development Co. v. State*, 294 N.W.2d 288 (Minn. 1980).

Neb.—*Big John's Billiards, Inc. v. State*, 288 Neb. 938, 852 N.W.2d 727 (2014).

**Absolute nature of right**

Once created, a vested right becomes absolute and is constitutionally protected from legislative invasion.

Okla.—*Triple D Excavation v. Edwards*, 2003 OK CIV APP 38, 70 P.3d 884 (Div. 2 2003).

**Permanency**

For a right to be vested, there must exist an expectation of permanency.

Kan.—[Farmland Industries, Inc. v. Kansas Corp. Com'n](#), 29 Kan. App. 2d 1031, 37 P.3d 640 (2001).

15 D.C.—[Scholtz Partnership v. District of Columbia Rental Accommodations Commission](#), 427 A.2d 905 (D.C. 1981).

Ill.—[de la Rosa v. Zollar](#), 291 Ill. App. 3d 855, 225 Ill. Dec. 820, 684 N.E.2d 811 (1st Dist. 1997).

Ind.—[Foley v. Consolidated City of Indianapolis](#), 421 N.E.2d 1160 (Ind. Ct. App. 1981).

Kan.—[Farmland Industries, Inc. v. Kansas Corp. Com'n](#), 29 Kan. App. 2d 1031, 37 P.3d 640 (2001).

Ky.—[Louisville Shopping Center, Inc. v. City of St. Matthews](#), 635 S.W.2d 307 (Ky. 1982).

La.—[Church Mut. Ins. Co. v. Dardar](#), 145 So. 3d 271 (La. 2014).

N.H.—[In re Goodlander](#), 161 N.H. 490, 20 A.3d 199 (2011).

Ohio—[State ex rel. Jordan v. Indus. Comm.](#), 120 Ohio St. 3d 412, 2008-Ohio-6137, 900 N.E.2d 150 (2008).

Or.—[Luethe v. Multnomah County](#), 240 Or. App. 263, 246 P.3d 487 (2010).

**Mere expectation not a basis for vesting of a statutory right**

Ohio—[Toledo City School Dist. Bd. of Edn. v. State Bd. of Edn.](#), 2014-Ohio-3741, 18 N.E.3d 505, 310 Ed. Law Rep. 445 (Ohio Ct. App. 10th Dist. Franklin County 2014).

16 Kan.—[Dester v. Dester](#), 50 Kan. App. 2d 914, 335 P.3d 119 (2014).

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## 16A C.J.S. Constitutional Law § 473

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### A. General Principles

## § 473. Power of government to impair a vested right

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2630 to 2632

**Except in a legitimate exercise of the police power, neither the states nor the federal government may impair or divest vested rights.**

Although a legislature may change the existing law at its pleasure, it may not deprive a person of a vested property right acquired under the existing law.<sup>1</sup> Therefore, a statute should not be construed as interfering with vested rights unless that intention is expressly declared in the enactment.<sup>2</sup> Under the provisions of the state constitutions, states are generally prohibited from impairing vested rights by legislative enactment<sup>3</sup> or by the enactment or subsequent repeal of a municipal ordinance.<sup>4</sup> In order to fall within the constitutional prohibition against such divestiture of rights, however, the law must create new obligations, impose new duties, or attach a new disability to a contract in existence when the law becomes effective.<sup>5</sup>

The Fifth Amendment to the Constitution of the United States, which provides that no person shall be deprived of life, liberty, or property without due process of law, secures the individual against any action of the federal government divesting vested rights.<sup>6</sup> Vested property rights are protected against state action by the provision of the Fourteenth Amendment that no state shall deprive any person of life, liberty, or property without due process of law.<sup>7</sup> The authority of Congress to alter, amend, or

repeal an act is subject to the limitation that rights vested cannot be disturbed.<sup>8</sup> Thus, relevant constitutional restraints limit the power to terminate an entitlement whether the entitlement is denominated a right or a privilege.<sup>9</sup>

It has been found that vested rights may be impaired with due process of law in some circumstances.<sup>10</sup> Furthermore, although there is authority to the contrary,<sup>11</sup> it is generally found that the legislature may divest vested rights in a legitimate exercise of the police power<sup>12</sup> whenever reasonably necessary to the protection of the health, safety, morals, and general welfare of the public.<sup>13</sup> Only substantial rights and interests are protected, not some imagined advantage.<sup>14</sup> While a court cannot destroy vested property rights,<sup>15</sup> the creation of new rights or the abolition of old rights not vested is permissible.<sup>16</sup>

***Rights in nonenforcement of law, in continuing legal violations, or similar claims of right.***

No one acquires a vested or protected right by way of a longstanding violation of the Constitution<sup>17</sup> even when that span of time covers our entire national existence and predates it.<sup>18</sup> In addition, vested rights are not acquired by reason of the nonenforcement of a valid statute<sup>19</sup> or city ordinance.<sup>20</sup>

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Footnotes

- 1 N.H.—*Tuttle v. New Hampshire Medical Malpractice Joint Underwriting Association*, 159 N.H. 627, 992 A.2d 624 (2010).
- 2 Va.—*Ferguson v. Stokes*, 287 Va. 446, 756 S.E.2d 455 (2014).
- 3 Fla.—*Robbins v. Robbins*, 360 So. 2d 10 (Fla. 2d DCA 1978).  
Ill.—*Dardeen v. Heartland Manor, Inc.*, 186 Ill. 2d 291, 238 Ill. Dec. 30, 710 N.E.2d 827 (1999).  
Md.—*Dryfoos v. Hostetter*, 268 Md. 396, 302 A.2d 28 (1973).  
N.C.—*Mansour v. Rabil*, 277 N.C. 364, 177 S.E.2d 849 (1970).  
Ohio—*Bielat v. Bielat*, 87 Ohio St. 3d 350, 2000-Ohio-451, 721 N.E.2d 28 (2000).  
**Adjudication of vested rights by commission**  
A commission created by the legislature may not exercise power to adjudicate vested rights, but the rule whereby the commission merely assumes to protect rights lawfully ascertained is not invalid as an assumption of this power.  
Tex.—*State v. Jarmon*, 25 S.W.2d 936 (Tex. Civ. App. San Antonio 1930), writ dismissed, (May 16, 1931).  
**Statute effective in future**  
The vesting of property rights should not be affected by the enactment of a statute to be effective in the future.  
U.S.—*Society Nat. Bank of The Miami Valley v. Haynes*, 18 B.R. 582 (Bankr. S.D. Ohio 1982).
- 4 Ga.—*Clairmont Development Co. v. Morgan*, 222 Ga. 255, 149 S.E.2d 489 (1966).  
Ind.—*Vesenmeir v. City of Aurora*, 232 Ind. 628, 115 N.E.2d 734 (1953).  
La.—*McGee v. Police Jury of Caddo Parish*, 66 So. 2d 408 (La. Ct. App. 2d Cir. 1953), judgment aff'd, 225 La. 471, 73 So. 2d 424 (1954).  
N.Y.—*Town of Greenburgh v. General Outdoor Advertising Co.*, 109 N.Y.S.2d 826 (Sup 1951).  
**No vested right in provisions of an ordinance having no constitutional authority**  
Pa.—*Francis v. Neville Tp.*, 372 Pa. 77, 92 A.2d 892 (1952).
- 5 La.—*Rey v. Guidry*, 618 So. 2d 425 (La. Ct. App. 5th Cir. 1993), writ granted, 620 So. 2d 822 (La. 1993) and judgment aff'd, 630 So. 2d 714 (La. 1994).  
**Interpretive legislation**  
Even interpretive legislation cannot operate to disturb already vested rights; the legislature cannot retroactively affect, under the guise of interpretive legislation, substantive rights vested under earlier unambiguous legislation.  
La.—*Terrebonne v. South Lafourche Tidal Control Levee Dist.*, 445 So. 2d 1221 (La. 1984).
- 6 Ga.—*Clairmont Development Co. v. Morgan*, 222 Ga. 255, 149 S.E.2d 489 (1966).



- Mo.—*State ex rel. Jones v. Nolte*, 350 Mo. 271, 165 S.W.2d 632 (1942).
- Pa.—*Jenkins v. Unemployment Compensation Bd. of Review*, 162 Pa. Super. 49, 56 A.2d 686 (1948).
- Tex.—*Paddock v. Siemoneit*, 147 Tex. 571, 218 S.W.2d 428, 7 A.L.R.2d 1062 (1949).
- 7 Ill.—*Panzella v. River Trails School Dist. 26*, Cook County, 313 Ill. App. 3d 527, 246 Ill. Dec. 303, 729 N.E.2d 954, 145 Ed. Law Rep. 718 (1st Dist. 2000).
- Kan.—*State ex rel. Fatzer v. Salome*, 169 Kan. 585, 220 P.2d 192 (1950).
- La.—*McGee v. Police Jury of Caddo Parish*, 66 So. 2d 408 (La. Ct. App. 2d Cir. 1953), judgment *aff'd*, 225 La. 471, 73 So. 2d 424 (1954).
- Mich.—*Van Buren Tp. v. Garter Belt Inc.*, 258 Mich. App. 594, 673 N.W.2d 111 (2003).
- 8 N.M.—*Holmberg v. Bradford*, 1952-NMSC-051, 56 N.M. 401, 244 P.2d 785 (1952).
- Ala.—*Land v. Cooper*, 250 Ala. 271, 34 So. 2d 313 (1948).
- Cal.—*People v. Western Air Lines*, 42 Cal. 2d 621, 268 P.2d 723 (1954).
- Tex.—*National Carloading Corp. v. Phoenix-El Paso Exp.*, 142 Tex. 141, 176 S.W.2d 564 (1943).
- 9 U.S.—*Bell v. Burson*, 402 U.S. 535, 91 S. Ct. 1586, 29 L. Ed. 2d 90 (1971).
- Haw.—*Perry v. Planning Commission of Hawaii County*, 62 Haw. 666, 619 P.2d 95 (1980).
- 10 Cal.—*People v. K. Sakai Co.*, 56 Cal. App. 3d 531, 128 Cal. Rptr. 536 (1st Dist. 1976).
- Neb.—*Buchholz v. Buchholz*, 197 Neb. 180, 248 N.W.2d 21 (1976).
- 11 N.J.—*Woodcliff Management v. North Bergen Tp.*, 127 N.J. Super. 123, 316 A.2d 494 (Law Div. 1974).
- 12 Cal.—*In re Marriage of Buol*, 39 Cal. 3d 751, 218 Cal. Rptr. 31, 705 P.2d 354 (1985).
- Colo.—*Lakewood Pawnbrokers, Inc. v. City of Lakewood*, 183 Colo. 370, 517 P.2d 834 (1973).
- Neb.—*Alcoholic Resocialization Conditioning Help, Inc. v. State*, 206 Neb. 788, 295 N.W.2d 281 (1980).
- N.J.—*Prudential Ins. Co. of America v. Mayor and Bd. of Council of Town of Guttenberg*, 196 N.J. Super. 482, 483 A.2d 417 (App. Div. 1984).
- Legislative control under police powers**
- No person can acquire the vested right to continue, when once licensed, in a business, trade, or occupation which is subject to legislative control under the police powers.
- Haw.—*Applications of Herrick*, 82 Haw. 329, 922 P.2d 942 (1996).
- 13 Cal.—*Bouley v. Long Beach Memorial Medical Center*, 127 Cal. App. 4th 601, 25 Cal. Rptr. 3d 813, 8 A.L.R.6th 741 (2d Dist. 2005).
- Neb.—*Buchholz v. Buchholz*, 197 Neb. 180, 248 N.W.2d 21 (1976).
- 14 U.S.—*Crosley Corporation v. Hazeltine Corporation*, 122 F.2d 925 (C.C.A. 3d Cir. 1941).
- Md.—*Kelch v. Keehn*, 183 Md. 140, 36 A.2d 544 (1944).
- N.Y.—*Alpren v. Consolidated Edison Co. of New York*, 168 Misc. 381, 5 N.Y.S.2d 254 (Sup 1938).
- 15 N.M.—*Holmberg v. Bradford*, 1952-NMSC-051, 56 N.M. 401, 244 P.2d 785 (1952).
- 16 U.S.—*Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 98 S. Ct. 2620, 57 L. Ed. 2d 595 (1978).
- Ind.—*Dague v. Piper Aircraft Corp.*, 275 Ind. 520, 418 N.E.2d 207, 25 A.L.R.4th 629 (1981).
- N.J.—*Rosenberg v. Town of North Bergen*, 61 N.J. 190, 293 A.2d 662 (1972).
- 17 U.S.—*Committee For Public Ed. and Religious Liberty v. Nyquist*, 413 U.S. 756, 93 S. Ct. 2955, 37 L. Ed. 2d 948 (1973).
- Ohio—*In re Lamb*, 34 Ohio App. 2d 85, 63 Ohio Op. 2d 153, 296 N.E.2d 280 (8th Dist. Cuyahoga County 1973).
- 18 U.S.—*Walz v. Tax Commission of City of New York*, 397 U.S. 664, 90 S. Ct. 1409, 25 L. Ed. 2d 697 (1970).
- Ohio—*In re Lamb*, 34 Ohio App. 2d 85, 63 Ohio Op. 2d 153, 296 N.E.2d 280 (8th Dist. Cuyahoga County 1973).
- 19 Ala.—*Department of Public Safety v. Freeman Ready-Mix Co.*, 292 Ala. 380, 295 So. 2d 242 (1974).
- 20 Cal.—*Acker v. Baldwin*, 18 Cal. 2d 341, 115 P.2d 455 (1941).

## 16A C.J.S. Constitutional Law § 474

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### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### A. General Principles

## § 474. Mode of impairing vested private right or statutory right

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2630 to 2632

**Once a right is vested, its impairment or destruction must comport with constitutional principles, and a statute should not be construed as interfering with vested rights unless such an intention is expressly declared.**

Once a right is vested, its impairment or destruction must comport with constitutional principles,<sup>1</sup> and a statute should not be construed as interfering with vested rights unless that intention is expressly declared.<sup>2</sup> Moreover, a procedure prescribed by statute for divesting a right must be substantially followed.<sup>3</sup> Where property has been surveyed and platted, for example, property rights vesting under such plat cannot be changed by a subsequent survey ordered by the city.<sup>4</sup>

#### ***Destruction of property as a divestiture.***

Vested rights may be divested not only by a change of the title to the property but also by the destruction of the property itself.<sup>5</sup>

#### ***Forfeiture and transfer by state as a divestiture.***

Vested rights may be divested by forfeiture,<sup>6</sup> but the legislature has no power to transfer property from one to another directly or indirectly without the consent of the owner.<sup>7</sup>

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Footnotes

- 1 Cal.—*Aries Dev. Co. v. California Coastal Zone Conservation Com.*, 48 Cal. App. 3d 534, 122 Cal. Rptr. 315 (4th Dist. 1975).
- 2 Va.—*Ferguson v. Stokes*, 287 Va. 446, 756 S.E.2d 455 (2014).
- 3 Or.—*State, By and Through State Highway Commission v. Burk*, 200 Or. 211, 265 P.2d 783 (1954).
- 4 Or.—*Bernitt v. City of Marshfield*, 89 Or. 556, 174 P. 1153 (1918).  
Tex.—*Gambrell v. Chalk Hill Theatre Co.*, 205 S.W.2d 126 (Tex. Civ. App. Austin 1947), writ refused n.r.e., (Jan. 7, 1948).
- 5 Kan.—*State ex rel. Fatzer v. Salome*, 169 Kan. 585, 220 P.2d 192 (1950).
- 6 N.H.—*State v. Rum, Whiskey & Gin*, 51 N.H. 373, 1871 WL 4081 (1871).
- 7 Cal.—*In re Lindquist's Estate*, 25 Cal. 2d 697, 154 P.2d 879 (1944).  
Kan.—*State ex rel. Fatzer v. Salome*, 169 Kan. 585, 220 P.2d 192 (1950).  
Md.—*Queen v. Anderson*, 191 Md. 522, 62 A.2d 612 (1948).

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## 16A C.J.S. Constitutional Law § 475

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### A. General Principles

## § 475. Claim of vested right based on presumed continuation of existing law

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑2630 to 2632

West's Key Number Digest, [Statutes](#) 🔑1559

**While there is generally no vested right in the continuance of an existing law, some property rights and other absolute rights and interests are considered vested under the law such that they cannot be divested by a law's repeal.**

No person has a vested right in a continuance of the common or statutory law, and hence, a right created solely by statute may generally be taken away by repeal or by new legislation.<sup>1</sup> However, there is also precedent supporting the assertion that vested rights may sometimes be property rights created by statute.<sup>2</sup> In the usual case though, no person has a vested right in a rule of law remaining unchanged; this is because a vested right that cannot be retrospectively impaired is, nearly by definition, a contract right, a property right, or a right arising from a transaction which has become perfected to the degree that it is not dependent on the continued existence of the statute or common law.<sup>3</sup>

Although a statute should not be construed as interfering with vested rights unless that intention is clear from the enactment,<sup>4</sup> mere expectation is not a sufficient basis for a finding that a statutory right has vested.<sup>5</sup> For example, a contingent interest in property, founded on an anticipation in the continuance of existing laws, does not constitute a vested right.<sup>6</sup> Generally, to be "vested" and thus protected by due process guarantees, a right must be absolute, unconditional, and not simply an expectation of

a future benefit.<sup>7</sup> Therefore, any right conferred by statute can be taken away by statute before it has become vested.<sup>8</sup> Once the right has in fact vested, repeal or amendment of the statute creating it will not usually abolish such right.<sup>9</sup> This is particularly true where the statutorily created right is one involving contract or property rights<sup>10</sup> or where there are conditions of equitable estoppel or a clear showing of bad faith.<sup>11</sup>

While particular benefits, such as Social Security benefits, have been found to be vested property rights,<sup>12</sup> the prevalent conclusion is that mere gratuities, benefits, or privileges are not vested rights.<sup>13</sup>

A rule which has grown up on the principle of stare decisis as applied in the many judicial decisions by the courts throughout the country is not a vested right and may be abrogated.<sup>14</sup> Legal principles which have continued in force for such period and for such length of time as to create vested rights, however, are clothed with a force possessed by a statutory enactment and should be applied until the legislature sees fit to abrogate or modify them.<sup>15</sup>

***Distinction; claim of vested right in response to change in law and such claim in response to a retroactive law.***

The terms "retroactive" and "retrospective" are normally used interchangeably.<sup>16</sup> The distinction between a claim of vested right in the context of retroactive or retrospective legislation<sup>17</sup> and vested rights in the context of general prospective changes to the law turns on whether the statute has the same effect upon past transactions as to future transactions since a retrospective law will have the same effect upon both.<sup>18</sup> As a result, the judicial inquiry involves a judgment as to whether the new law attaches new legal consequences to events completed before its enactment.<sup>19</sup> Statutes are impermissibly retroactive or retrospective if they impair vested rights acquired under the existing laws or create new obligations, duties, or disabilities in respect to transactions already completed or rights already adjudicated at the time of enactment.<sup>20</sup>

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Footnotes

- 1 U.S.—*Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 98 S. Ct. 2620, 57 L. Ed. 2d 595 (1978).  
Ill.—*Chicago Limousine Service, Inc. v. City of Chicago*, 335 Ill. App. 3d 489, 269 Ill. Dec. 624, 781 N.E.2d 421 (1st Dist. 2002).  
Mo.—*Mid-America Dairymen, Inc. v. Payne*, 990 S.W.2d 648 (Mo. Ct. App. S.D. 1999).  
N.C.—*Waste Industries USA, Inc. v. State*, 220 N.C. App. 163, 725 S.E.2d 875 (2012).  
N.H.—*In re Goldman*, 151 N.H. 770, 868 A.2d 278 (2005).  
N.Y.—*Daniel v. New York State Div. of Housing and Community Renewal*, 179 Misc. 2d 452, 683 N.Y.S.2d 404 (Sup 1998).  
Tex.—*In re J.B.W.*, 99 S.W.3d 218 (Tex. App. Fort Worth 2003).  
**No one has a vested right to any rule of common law**  
Tex.—*Walls v. First State Bank of Miami*, 900 S.W.2d 117 (Tex. App. Amarillo 1995), writ denied, (July 8, 1996).  
Wyo.—*Greenwalt v. Ram Restaurant Corp. of Wyoming*, 2003 WY 77, 71 P.3d 717 (Wyo. 2003).  
**Taxpayers and franchise tax**  
Taxpayers do not have a vested right in the continuation of a particular measurement method for the franchise tax.  
Tex.—*Rylander v. Palais Royal, Inc.*, 81 S.W.3d 909 (Tex. App. Austin 2002).  
2 Ohio—*Swartz v. Householder*, 2014-Ohio-2359, 12 N.E.3d 1243 (Ohio Ct. App. 7th Dist. Jefferson County 2014).

- 3 Colo.—*Hickman v. Catholic Health Initiatives*, 2013 COA 129, 328 P.3d 266 (Colo. App. 2013), cert. denied, 2014 WL 2958780 (Colo. 2014).
- 4 Va.—*Ferguson v. Stokes*, 287 Va. 446, 756 S.E.2d 455 (2014).
- 5 Ohio—*Toledo City School Dist. Bd. of Edn. v. State Bd. of Edn.*, 2014-Ohio-3741, 18 N.E.3d 505, 310 Ed. Law Rep. 445 (Ohio Ct. App. 10th Dist. Franklin County 2014).
- 6 Ill.—*de la Rosa v. Zollar*, 291 Ill. App. 3d 855, 225 Ill. Dec. 820, 684 N.E.2d 811 (1st Dist. 1997).  
Ind.—*Foley v. Consolidated City of Indianapolis*, 421 N.E.2d 1160 (Ind. Ct. App. 1981).  
Kan.—*Farmland Industries, Inc. v. Kansas Corp. Com'n*, 29 Kan. App. 2d 1031, 37 P.3d 640 (2001).  
Ky.—*Louisville Shopping Center, Inc. v. City of St. Matthews*, 635 S.W.2d 307 (Ky. 1982).  
La.—*Church Mut. Ins. Co. v. Dardar*, 145 So. 3d 271 (La. 2014).  
N.H.—*In re Goodlander*, 161 N.H. 490, 20 A.3d 199 (2011).  
Ohio—*State ex rel. Jordan v. Indus. Comm.*, 120 Ohio St. 3d 412, 2008-Ohio-6137, 900 N.E.2d 150 (2008).  
Or.—*Luethe v. Multnomah County*, 240 Or. App. 263, 246 P.3d 487 (2010).
- 7 La.—*Church Mut. Ins. Co. v. Dardar*, 145 So. 3d 271 (La. 2014).
- 8 U.S.—*Southwestern Petroleum Corp. v. Udall*, 361 F.2d 650 (10th Cir. 1966).  
Ariz.—*Anderson v. Industrial Com'n of Arizona*, 205 Ariz. 411, 72 P.3d 341 (Ct. App. Div. 1 2003).  
Ga.—*Spengler v. Employers Commercial Union Ins. Co.*, 131 Ga. App. 443, 206 S.E.2d 693 (1974).  
Haw.—*Gardens at West Maui Vacation Club v. County of Maui*, 90 Haw. 334, 978 P.2d 772 (1999).  
Okla.—*Rivas v. Parkland Manor*, 2000 OK 68, 12 P.3d 452 (Okla. 2000).  
**Inchoate rights not acted upon are not vested**  
U.S.—*Hutton v. Autoridad Sobre Hogares De La Capital*, 78 F. Supp. 988 (D.P.R. 1948).  
La.—*State ex rel. Fitzmaurice v. Clay*, 208 La. 443, 23 So. 2d 177 (1945).  
Minn.—*Carroll v. State*, 242 Minn. 70, 64 N.W.2d 166 (1954).  
N.C.—*Pinkham v. Unborn Children of Jather Pinkham*, 227 N.C. 72, 40 S.E.2d 690 (1946).
- 9 Colo.—*Ficarra v. Department of Regulatory Agencies, Div. of Ins.*, 849 P.2d 6 (Colo. 1993).  
Ill.—*County of Kendall v. Aurora Nat. Bank Trust No. 1107*, 219 Ill. App. 3d 841, 162 Ill. Dec. 469, 579 N.E.2d 1283 (2d Dist. 1991).  
Miss.—*Hudson v. Moon*, 732 So. 2d 927 (Miss. 1999).  
Neb.—*Spilker v. City of Lincoln*, 238 Neb. 188, 469 N.W.2d 546 (1991).  
N.H.—*In re Goldman*, 151 N.H. 770, 868 A.2d 278 (2005).  
Wash.—*Ward v. Washington State University*, 39 Wash. App. 630, 695 P.2d 133, 23 Ed. Law Rep. 310 (Div. 3 1985).  
**Rights under existing law**  
Property rights acquired under an existing law that cannot be deprived by a change in the law are vested rights.  
N.H.—*In re Goodlander*, 161 N.H. 490, 20 A.3d 199 (2011).
- 10 Wash.—*Ward v. Washington State University*, 39 Wash. App. 630, 695 P.2d 133, 23 Ed. Law Rep. 310 (Div. 3 1985).
- 11 U.S.—*Lockridge v. City of Oldsmar, Fla.*, 475 F. Supp. 2d 1240 (M.D. Fla. 2007), *aff'd*, 273 Fed. Appx. 786 (11th Cir. 2008) (applying Florida law).
- 12 U.S.—*Ewing v. Gardner*, 185 F.2d 781 (6th Cir. 1950), judgment *rev'd* in part on other grounds, 341 U.S. 321, 71 S. Ct. 684, 95 L. Ed. 968 (1951) (reversed only as to award of costs to plaintiff).
- 13 Ind.—*State ex rel. Pollard v. Superior Court of Marion County, Room 3*, 233 Ind. 667, 122 N.E.2d 612 (1954).  
Ky.—*Jacober v. Board of Com'rs of City of Covington*, 607 S.W.2d 126 (Ky. Ct. App. 1980).  
N.Y.—*Orchard Grove of Dutchess, Inc. v. State*, 1 Misc. 3d 810, 772 N.Y.S.2d 201 (Ct. Cl. 2003).  
**Naturalization**  
U.S.—*In re Shee Mui Chong Yuen's Repatriation*, 73 F. Supp. 12 (Terr. Haw. 1944).  
**Veterans' benefits**  
U.S.—*Cunningham v. U. S.*, 212 Ct. Cl. 451, 549 F.2d 753 (1977).  
D.C.—*de Rodulfa v. U.S.*, 461 F.2d 1240, 18 A.L.R. Fed. 890 (D.C. Cir. 1972).
- 14 U.S.—*Cooper v. C.I.R.*, 197 F.2d 951 (4th Cir. 1952).  
Cal.—*Proper v. Reclamation Dist. No. 1500*, 174 Cal. 816, 163 P. 1037 (1917).  
**Erroneous decision**

A taxpayer who correctly divines what the supreme court is going to say about some action that he takes does not thereby acquire some vested right from the decision upholding that act, so as to require that his act be upheld later, when such decision turns out to have been wrong.

U.S.—[Central Nat. Bank of Cleveland v. U.S.](#), 94 Ct. Cl. 527, 41 F. Supp. 239 (1941).

15 U.S.—[Henry Clay and Bock & Co. v. United States](#), 205 F.2d 160 (C.C.P.A. 1953).

Wis.—[Skalitsky v. Consolidated Badger Co.-op.](#), 252 Wis. 132, 31 N.W.2d 153 (1948).

16 Minn.—[State v. Industrial Tool & Die Works](#), 220 Minn. 591, 21 N.W.2d 31 (1945).

17 For complete coverage of retroactive laws, see §§ 645 et seq.

18 Mo.—[Missouri Real Estate Com'n v. Rayford](#), 307 S.W.3d 686 (Mo. Ct. App. W.D. 2010).

19 Conn.—[State v. Faraday](#), 268 Conn. 174, 842 A.2d 567 (2004).

20 U.S.—[Guzman v. Attorney General U.S.](#), 770 F.3d 1077 (3d Cir. 2014).

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### B. Particular Rights

[Topic Summary](#) | [Correlation Table](#)

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## 16A C.J.S. Constitutional Law § 476

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### Constitutional Law

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### B. Particular Rights

## § 476. Legislative alteration of rights in estates; property rights

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2631 to 2636, 2639

### The nature or tenure of vested estates in property may not be destroyed by the legislature.

The legislature has no power to alter or to destroy by statute the nature or tenure of vested estates in property.<sup>1</sup> For example, so long as a reasonable time is allowed after the passage of the act to prevent its consequences, however, the legislature may shorten the time required by law for obtaining title by adverse possession.<sup>2</sup> The legislature is likewise without power to transform estates held in severalty to estates in common since such an act would divest individual rights,<sup>3</sup> and other courts have found that the legislature may not change existing joint tenancies into tenancies in common.<sup>4</sup> Furthermore, a joint bank account creates in each joint tenant a present vested right.<sup>5</sup>

### *Remainders and reversions.*

A contingent remainder constitutes a right of property which may not be impaired or destroyed by a statute passed after its creation<sup>6</sup> unless the remainder is essentially a mere expectancy and no person has any vested interest in it.<sup>7</sup> The right of the owner of a particular estate, under existing law, to bar contingent remainders is not a vested right, and its subsequent exercise

may accordingly be forbidden by statute even as to remainders created prior to its passage.<sup>8</sup> Furthermore, a possibility of reverter is not a vested right but a mere expectation of property in the future and so may be defeated by statute.<sup>9</sup>

### *Riparian rights.*

Consumptive, recreational, and aesthetic riparian rights are considered to be vested property rights, which may not be taken by inverse condemnation or by zoning, though riparian rights may be limited in order to further state policy encouraging beneficial use.<sup>10</sup> Therefore, the vested property rights of riparian proprietors in a navigable stream and in the land lying under and abutting on the stream may not be taken away by a statute which is not enacted as a proper exercise of the police power.<sup>11</sup> Where by statute a riparian owner is granted the right to extend or improve the lot within prescribed limits, such right also becomes vested.<sup>12</sup> Moreover, where landowners do not apply the water underlying their land to beneficial uses prior to the enactment of a statute regulating the use of such water, they do not have a vested right in the use of that water.<sup>13</sup>

### *Validating defective transfers.*

While an act of the legislature curing a prior defective conveyance is valid as against the grantor and his or her privies in title<sup>14</sup> or at whose instance it has been enacted,<sup>15</sup> it cannot operate to divest the title of a bona fide purchaser<sup>16</sup> or the lien of a mortgagee<sup>17</sup> or judgment creditor where such title has been acquired prior to the passage of the act.<sup>18</sup>

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#### Footnotes

- 1 Ark.—*Meadows v. Costoff*, 221 Ark. 561, 254 S.W.2d 472 (1953).  
Neb.—*Enterprise Irr. Dist. v. Willis*, 135 Neb. 827, 284 N.W. 326 (1939).  
Pa.—*Slifer v. Greenmount Cemetery Co.*, 164 Pa. Super. 534, 67 A.2d 584 (1949).  
**Life beneficiaries of trust**  
The life beneficiaries of a trust, in order to sustain a claim that the application of an amendment to an act allocating the distributions of regulated investment companies from capital gains to principal to a trust created prior to its effective date would be an unconstitutional interference with their vested rights, had to establish that they were deprived of property.  
Conn.—*Manufacturers Hanover Trust Co. v. Bartram*, 158 Conn. 48, 255 A.2d 828 (1969).
- 2 Ark.—*Towson v. Denson*, 74 Ark. 302, 86 S.W. 661 (1905).
- 3 Minn.—*Shell v. Matteson*, 81 Minn. 38, 83 N.W. 491 (1900).
- 4 Kan.—*Cress v. Hamnett*, 144 Kan. 128, 58 P.2d 61 (1936).
- 5 N.Y.—*Hart v. Hart*, 194 Misc. 162, 81 N.Y.S.2d 764 (Sup 1948), judgment aff'd, 274 A.D. 1036, 85 N.Y.S.2d 917 (1st Dep't 1949).  
Ohio—*Oleff v. Hodapp*, 129 Ohio St. 432, 2 Ohio Op. 409, 195 N.E. 838, 98 A.L.R. 764 (1935).
- 6 U.S.—*Aetna Life Ins. Co. v. Hoppin*, 214 F. 928 (C.C.A. 7th Cir. 1914).  
Ark.—*Love v. McDonald*, 201 Ark. 882, 148 S.W.2d 170 (1941).  
Kan.—*Cress v. Hamnett*, 144 Kan. 128, 58 P.2d 61 (1936).
- 7 Or.—*Lee v. Albro*, 91 Or. 211, 178 P. 784 (1919).  
**Interests in trust estate**  
Contingent interests in a trust estate to persons not in esse or not determined are not vested rights but mere expectancies which may be abolished by a statute permitting the trustor to revoke a voluntary trust.  
N.C.—*Stanback v. Citizens' Nat. Bank of Raleigh*, 197 N.C. 292, 148 S.E. 313 (1929).
- 8 Ill.—*Wood v. Chase*, 327 Ill. 91, 158 N.E. 470 (1927).  
N.C.—*Pinkham v. Unborn Children of Jather Pinkham*, 227 N.C. 72, 40 S.E.2d 690 (1946).
- 9 Colo.—*Union Colony Co. of Colorado v. Gallie*, 104 Colo. 46, 88 P.2d 120 (1939).

Ill.—[Prall v. Burckhardt](#), 299 Ill. 19, 132 N.E. 280, 18 A.L.R. 992 (1921).

Wash.—[Gillis v. King County](#), 42 Wash. 2d 373, 255 P.2d 546 (1953).

#### **Reversionary interest**

(1) A reversionary interest is nothing more than a mere expectancy or hope, based upon the anticipated continuance without change of the applicable laws of prescription, and is not a vested right protected by the Constitution.

U.S.—[U.S. v. Nebo Oil Co.](#), 190 F.2d 1003 (5th Cir. 1951).

(2) A reversionary right of entry, like a possibility of reverter, amounts to no more than an expectancy and is not within the constitutional protection of vested rights.

Ky.—[Atkinson v. Kish](#), 420 S.W.2d 104 (Ky. 1967).

10 Wash.—[Matter of Deadman Creek Drainage Basin in Spokane County](#), 103 Wash. 2d 686, 694 P.2d 1071 (1985).

11 Md.—[Mayor and City Council of Baltimore v. Canton Co. of Baltimore](#), 186 Md. 618, 47 A.2d 775 (1946).

Ohio—[Lake Front-East Fifty-Fifth Street Corp. v. City of Cleveland](#), 21 Ohio Op. 1, 7 Ohio Supp. 17, 1939 WL 358 (C.P. 1939), *aff'd*, 36 N.E.2d 196 (Ohio Ct. App. 8th Dist. Cuyahoga County 1941).

Tex.—[Pendery v. Panhandle Refining Co.](#), 169 S.W.2d 766 (Tex. Civ. App. Fort Worth 1943), writ refused w.o.m., (July 7, 1943).

#### **Proper exercise of police power**

An act to conserve, protect, control, and regulate the use, development, diversion, and appropriation of water for beneficial and public purposes, and to prevent the waste and unreasonable use of water, is not unconstitutional as the taking of preexisting vested riparian rights of the downstream owners.

Kan.—[State ex rel. Emery v. Knapp](#), 167 Kan. 546, 207 P.2d 440 (1949).

12 Md.—[Causey v. Gray](#), 250 Md. 380, 243 A.2d 575 (1968).

13 N.D.—[Baeth v. Hoisveen](#), 157 N.W.2d 728 (N.D. 1968).

#### **State leasing program**

The state land board's leasing program did not interfere with any vested rights of riparian owners who had not yet placed permanent structures on the state's submerged and submersible land adjacent to their riparian property.

Or.—[Brusco Towboat Co. v. State, By and Through Straub](#), 284 Or. 627, 589 P.2d 712 (1978).

14 Cal.—[City and County of San Francisco v. Beideman](#), 17 Cal. 443, 1861 WL 788 (1861).

#### **Retrospective statutes**

Retrospective statutes curing defects in acts done, or authorizing or confirming the exercise of powers, are valid where the legislature originally had authority to confer the power or authorize the act except where attempted to impair vested rights.

Mich.—[Priest v. Canada Life Assur. Co.](#), 179 Mich. App. 731, 446 N.W.2d 352 (1989).

#### **Deed made by State**

The legislature may validate a defective deed made by the State without affecting vested rights.

Iowa—[Hester v. Groneweg & Schoentgen Co.](#), 182 Iowa 835, 164 N.W. 186 (1917).

As to curative acts with respect to deeds and other instruments, generally, see § 670.

15 Pa.—[Caverow v. Mutual Benefit Life Ins. Co.](#), 52 Pa. 287, 1866 WL 6132 (1866).

16 Md.—[Grove v. Todd](#), 41 Md. 633, 1875 WL 4887 (1875).

17 Cal.—[Miller v. McKenna](#), 23 Cal. 2d 774, 147 P.2d 531 (1944).

Ill.—[Steger v. Traveling Men's Building & Loan Ass'n](#), 208 Ill. 236, 70 N.E. 236 (1904).

18 Va.—[Merchants' Bank of Danville v. Ballou](#), 98 Va. 112, 32 S.E. 481 (1899).

## 16A C.J.S. Constitutional Law § 477

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### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### B. Particular Rights

## § 477. Legislative alteration of rights in estates; property rights—Right to inheritance or trust property

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2632, 2634

**During the lifetime of the testator or intestate, his or her heirs, devisees, or legatees have no vested interest in the property.**

A person's heirs, devisees, or legatees have no vested interest in his or her property during the person's lifetime that may not be destroyed by a statute or constitutional provision regulating the succession of property.<sup>1</sup> Expectant heirs must look for their vested rights to the law in force at the time of the ancestor's death<sup>2</sup> since there is no vested right in any contemporary form of the law of descent and distribution.<sup>3</sup> Where, however, on a person's death, the rights of his or her heirs, devisees, or legatees have thereby become vested, these rights may not be impaired by subsequent legislation<sup>4</sup> or by legislation that applies to instruments executed before the enactment of the statute.<sup>5</sup>

### *Altering method of executing wills; validating wills defectively executed.*

The legislature has the power to prescribe rules for the execution of wills, whether made before or after the passage of the statute, if rights have not become vested by the testator's death.<sup>6</sup>

A defective will previously executed may be validated by a statute passed prior to the testator's death<sup>7</sup> but not by a statute passed after his or her death.<sup>8</sup>

### *Contingent interests in a trust.*

Contingent interests in a trust do not constitute vested rights of such a character as to render unconstitutional the application to that trust of a statute declared to be applicable to trusts then existing.<sup>9</sup>

### *Rights of trustees and guardians; right to an accounting.*

The rights acquired by trustees under a private, active trust are vested and may not be impaired by subsequent legislation.<sup>10</sup>

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#### Footnotes

- 1 Cal.—*Estate of Ginochio*, 43 Cal. App. 3d 412, 117 Cal. Rptr. 565 (1st Dist. 1974).  
Ga.—*Eig v. Savage*, 177 Ga. App. 514, 339 S.E.2d 752 (1986).  
Neb.—*Bellairs v. Dudden*, 194 Neb. 5, 230 N.W.2d 92 (1975).  
**Law governing succession to personal property**  
The rule of common law that succession to personal property is governed by the law of domicile may be changed by the legislature of the state in which the property is situated.  
Ill.—*Headen v. Cohn*, 292 Ill. 210, 126 N.E. 550 (1920).  
**Share of spouse in property of deceased**  
Acts relating to the share of a surviving spouse in the land of a deceased spouse, and relating to the surviving spouse's share in land owned by the deceased spouse dying testate at the time of his or her death, does not disturb and impair existing and vested property rights, affecting only property owned by the deceased spouse at the time of his or her death and in no wise affecting the enjoyment and ownership of such property by the owner during his or her lifetime.  
Md.—*Key v. Key*, 134 Md. 418, 106 A. 744 (1919).
- 2 Ind.—*Burget v. Merritt*, 155 Ind. 143, 57 N.E. 714 (1900).  
Va.—*McFadden v. McNorton*, 193 Va. 455, 69 S.E.2d 445 (1952).
- 3 Wis.—*In re Topel's Estate*, 32 Wis. 2d 223, 145 N.W.2d 162 (1966).  
**Husband had no vested right to inheritance laws**  
A husband had no vested right to apply the inheritance laws at the time he executed an antenuptial agreement with his wife, in 1969, to his wife's estate in 1983.  
Neb.—*In re Estate of Peterson*, 221 Neb. 792, 381 N.W.2d 109 (1986).  
**Must yield to subsequent change of interpretation in law**  
Interests in land are not protected as vested property rights where the interests have been acquired by inheritance and without detrimental reliance and no subsequent transaction has been executed; one who has acquired title by operation of law under a prior interpretation of law regulating descent and distribution must yield to a subsequent change of interpretation.  
Miss.—*Collier v. Shell Oil Co.*, 534 So. 2d 1015 (Miss. 1988).
- 4 Ark.—*Lucas v. Handcock*, 266 Ark. 142, 583 S.W.2d 491 (1979).  
Colo.—*Estate of Barnhart*, 38 Colo. App. 544, 563 P.2d 972 (App. 1977), judgment aff'd, 194 Colo. 505, 574 P.2d 500 (1978).  
Ill.—*In re Estate of Jolliff*, 199 Ill. 2d 510, 264 Ill. Dec. 642, 771 N.E.2d 346 (2002).  
N.Y.—*Smith's Estate*, 114 Misc. 2d 346, 451 N.Y.S.2d 546 (Sur. Ct. 1982).  
**Statute applied to avoid escheat**

The retroactive application of a statutory amendment providing for the distribution to the heirs of a decedent's predeceased spouse rather than escheat to the State would not divest the unknown heirs of the decedent of any "vested" right to a period of five years in which to present their claims.

Cal.—[Mannheim v. Superior Court](#), 3 Cal. 3d 678, 91 Cal. Rptr. 585, 478 P.2d 17 (1970).

**Trust agreement**

Where the interests of beneficiaries under trust funds of a trust established in the first state arose out of a contract in the form of a trust agreement, they became vested upon the death of the settlor in the second state, and the latter state could not by legislation thereafter impair and destroy those rights.

N.Y.—[In re National City Bank of New York](#), 197 Misc. 462, 93 N.Y.S.2d 790 (Sup 1949).

5 Ohio—[Bank One Trust Co. N.A. v. Reynolds](#), 173 Ohio App. 3d 1, 2007-Ohio-4197, 877 N.E.2d 342 (2d Dist. Montgomery County 2007).

**Due process implications where statute applies new presumption to vested rights**

Mass.—[Bird Anderson v. BNY Mellon, N.A.](#), 463 Mass. 299, 974 N.E.2d 21 (2012).

6 Wash.—[Strand v. Stewart](#), 51 Wash. 685, 99 P. 1027 (1909).

7 N.Y.—[Morgan v. Durand](#), 51 Misc. 523, 101 N.Y.S. 1002 (Sup 1906).

As to curative acts with respect to wills as retrospective laws, see § 670.

8 N.C.—[Sluder v. Wolf Mountain Lumber Co.](#), 181 N.C. 69, 106 S.E. 215 (1921).

9 Okla.—[Cavett v. Peterson](#), 1984 OK 59, 688 P.2d 52 (Okla. 1984).

10 La.—[Hagerty v. Clement](#), 195 La. 230, 196 So. 330 (1940).

**Testamentary trustee**

Where a statute authorizing the creation of a trust by will was repealed after the death of the testatrix although before the trustee had qualified, the trust created under authority of the statute remained in effect, since the rights of the parties vested on the death of the testatrix, and the statute did not contemplate qualification by the trustee as an essential condition to its operation.

La.—[Succession of Forstner](#), 186 La. 577, 173 So. 111 (1937).

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### B. Particular Rights

## § 478. Legislative alteration of rights in estates; property rights—Adoption and legitimation statutes

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 2634

West's Key Number Digest, [Descent and Distribution](#) 🔑 67.21 to 67.24

West's Key Number Digest, [Wills](#) 🔑 497(6)

**Adoption and legitimation statutes do not disturb vested rights and are valid where they operate only upon the estates of persons dying in the future, and new statutory presumptions that are retroactive may be valid depending on the particular circumstances.**

Many decisions have held that adoption<sup>1</sup> and legitimation statutes, being but changes in the law of descent and distribution, and operative only as to the estates of persons dying in the future, do not disturb vested rights and are valid.<sup>2</sup> There is also authority that where the law in effect at the time of death is subsequently found unconstitutional, the law as it exists at the present time governs the issue of whether a child born out of wedlock can inherit by intestate succession.<sup>3</sup> Further, even posthumous paternity testing authorized by a state statute may be valid, particularly in a jurisdiction where the Uniform Parentage Act has been adopted, as such Act requires that paternity testing include the DNA testing of deceased individuals and it does not exclude intestate nor probate proceedings.<sup>4</sup> However, if a statute creates a new presumption, applicable to past and future, that an adopted child is a descendent of the adopting parent for purposes of inheritance, such a law is retroactive although not

necessarily invalid,<sup>5</sup> and it is subject to greater scrutiny. Thus, a court must consider any asserted due process arguments when a statute applies a new presumption to vested rights preexisting the effective date of the presumption.<sup>6</sup>

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Footnotes

- 1 Mass.—[Katz v. Koronchik](#), 369 Mass. 125, 338 N.E.2d 339 (1975).  
N.J.—[In re McEwan's Estate](#), 128 N.J. Eq. 140, 15 A.2d 340 (Prerog. Ct. 1940).  
N.Y.—[In re Frost's Will](#), 192 A.D. 206, 182 N.Y.S. 559 (1st Dep't 1920), *aff'd*, 230 N.Y. 580, 130 N.E. 901 (1920).  
**No vested interest prior to adoption**  
Prior to their adoption, the adopted children of the testator's grandnephew had no vested interest in a share of the property that the "issue" of the testator's grandnephew would receive if the grandnephew predeceased the life beneficiary of a trust.  
Mass.—[Callan v. Winters](#), 404 Mass. 198, 534 N.E.2d 298 (1989).  
2 Fla.—[Christopher v. Mungen](#), 66 Fla. 467, 63 So. 923 (1913).  
3 Ala.—[Clemons v. Howard](#), 124 So. 3d 738 (Ala. Civ. App. 2013).  
4 Okla.—[In re Estate of Dicksion](#), 2011 OK 96, 286 P.3d 283 (Okla. 2012), *as corrected*, (July 9, 2012).  
5 Ill.—[Altenheim German Home v. Bank of America, N.A.](#), 376 Ill. App. 3d 26, 314 Ill. Dec. 885, 875 N.E.2d 1172 (2d Dist. 2007).  
6 Mass.—[Bird Anderson v. BNY Mellon, N.A.](#), 463 Mass. 299, 974 N.E.2d 21 (2012).  
For a discussion of retroactive laws, see §§ 645 et seq.

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### B. Particular Rights

## § 479. Vested rights dependent on marriage

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2634 to 2636, 2639

**Various rights acquired under marital and other family relationships are vested and cannot be disturbed by subsequent legislation.**

Vested rights acquired by virtue of the law existing at the time of marriage cannot be disturbed by subsequent legislation.<sup>1</sup> In this regard, the special equitable interest in property held in the name of the other spouse obtained in dissolution proceedings is a vested property interest.<sup>2</sup> Likewise, property interests represented by a divorce decree's support alimony award are vested rights embodied in the judgment; as such, they are constitutionally insulated from legislative interference by after-enacted statutes.<sup>3</sup> Vested property rights can be diminished by the retrospective application of changes in marital property law, however, where such application is demanded by a sufficiently important state interest.<sup>4</sup> Furthermore, divorce statutes which provide for the distribution of marital property acquired after the marriage but prior to the statute's effective date do not interfere with any vested right.<sup>5</sup>

Contingent or expectant rights in the marital property are not such vested interests as may not be changed, modified, or wholly abolished.<sup>6</sup> Thus, where a spouse agrees at the time of marriage to transfer property to the joint names of the spouses, the presumption of an immediate vested interest in the donee-spouse does not arise until the transfer is in fact made.<sup>7</sup>

Parties to a marriage contract cannot have vested property rights in the purely domestic relation.<sup>8</sup> Accordingly, there is no vested right that a spouse has, arising out of contract or out of the marital status, to remain married.<sup>9</sup>

### *Issues with regard to children.*

As a general rule, there is no vested right in a person to the custody of a child.<sup>10</sup> Natural parents, however, have been determined to have vested rights to the society and custody of their children<sup>11</sup> so that a mother's parental rights to her four children has been considered a vested right or a well-founded claim, in determining whether a statutory amendment adding constructive abandonment as a ground for terminating parental rights could be applied retroactively.<sup>12</sup> In any event, parents' rights with respect to their children are not considered absolute but must yield to the welfare of the children.<sup>13</sup>

An obligee spouse's right to child support arrearages is a vested property right protected by the state constitution.<sup>14</sup> Furthermore, a divorced father has a mere expectation, rather than any vested legal right, to seek retroactive modification of his child support obligation; thus, a statutory amendment precluding the retroactive modification of a child support obligation does not unconstitutionally impair any vested right where the father does not in fact seek modification before the amendment is enacted.<sup>15</sup>

### *Community property.*

Under statutes defining the respective interests and rights of a husband and wife in community property, one spouse has a vested interest in one half of the earnings of the spouses.<sup>16</sup> A statute giving community property to the survivor vests no right in the survivor, however, prior to the death of the spouse, which the legislature may not take away.<sup>17</sup> Further, an amendment to a statute governing the reimbursement of an ex-spouse for payments made on community obligations has been held to represent a substantive change to the law that cannot be applied retroactively.<sup>18</sup>

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### Footnotes

- 1 Ark.—*Meadows v. Costoff*, 221 Ark. 561, 254 S.W.2d 472 (1953).  
S.C.—*Outlaw v. Barnes*, 108 S.C. 451, 94 S.E. 868 (1918).  
**Rights under estate by entirety**  
Rights under an estate by entirety created prior to the passage of a statute authorizing the dissolution of such estates are vested, and a court in a divorce proceeding could not dissolve the estate.  
Ark.—*Meadows v. Costoff*, 221 Ark. 561, 254 S.W.2d 472 (1953).
- 2 Fla.—*Poole v. Savage*, 525 So. 2d 982 (Fla. 1st DCA 1988).  
**Rights in retirement benefits**  
The statute governing the allocation and distribution of marital property at the time of the marital dissolution did not give a husband any vested rights in his wife's public teacher retirement benefits prior to dissolution; thus, the application of another statute which precluded the treatment of her retirement benefits as marital property did not result in an unconstitutional retrospective application of the statute to impair any vested rights of the husband.  
Mo.—*Silcox v. Silcox*, 6 S.W.3d 899 (Mo. 1999).
- 3 Okla.—*Messenger v. Messenger*, 1992 OK 27, 827 P.2d 865 (Okla. 1992).
- 4 Cal.—*Fredericks v. Fredericks*, 226 Cal. App. 3d 875, 277 Cal. Rptr. 107 (4th Dist. 1991).
- 5 Me.—*Fournier v. Fournier*, 376 A.2d 100 (Me. 1977).
- Mo.—*Corder v. Corder*, 546 S.W.2d 798 (Mo. Ct. App. 1977).
- 6 S.C.—*Scheper v. Scheper*, 125 S.C. 89, 118 S.E. 178 (1923).

### Premarital agreements

The application of an amendment to the state constitution permitting premarital agreements, to validate a premarital agreement entered into prior to the amendment, would not unconstitutionally impair vested rights since the spouses merely had a voidable interest in the premarital agreement.

Tex.—[Beck v. Beck](#), 814 S.W.2d 745 (Tex. 1991).

### Potential alimony

Potential alimony is not a vested property right for purposes of determining whether the dissolution of marriage law providing as the sole ground for divorce that the marriage is irrevocably broken and/or insanity impairs the obligation of the marriage contract.

Fla.—[Ryan v. Ryan](#), 277 So. 2d 266 (Fla. 1973).

N.Y.—[Foley v. Foley](#), 34 A.D.2d 1098, 312 N.Y.S.2d 738 (4th Dep't 1970).

La.—[Stallings v. Stallings](#), 177 La. 488, 148 So. 687 (1933).

Cal.—[In re Marriage of Walton](#), 28 Cal. App. 3d 108, 104 Cal. Rptr. 472 (4th Dist. 1972).

Ga.—[George v. Sizemore](#), 238 Ga. 525, 233 S.E.2d 779 (1977).

### Conservator rights

A mother's entitlement to be the sole managing conservator for her two minor children would not become fixed or vested until she was appointed by the court; thus, no vested right was unconstitutionally removed by an amendment allowing the trial court to appoint the parents of minor children as joint managing conservators without a prior written agreement.

Tex.—[Matter of Marriage of Roach](#), 773 S.W.2d 28 (Tex. App. Amarillo 1989), writ denied, (Nov. 8, 1989).

Ill.—[In Interest of Rauch](#), 45 Ill. App. 3d 784, 4 Ill. Dec. 61, 359 N.E.2d 894 (3d Dist. 1977).

Tex.—[In re R.A.T.](#), 938 S.W.2d 783 (Tex. App. Eastland 1997), writ denied, (Sept. 4, 1997).

Ind.—[Bailey v. Menzie](#), 542 N.E.2d 1015 (Ind. Ct. App. 1989).

Cal.—[In re Marriage of Brinkman](#), 111 Cal. App. 4th 1281, 4 Cal. Rptr. 3d 722 (6th Dist. 2003).

Tenn.—[State ex rel. McAllister v. Goode](#), 968 S.W.2d 834 (Tenn. Ct. App. 1997).

### No vested right in termination

A stipulation and agreement entered into by a father and mother, in which the father admitted that he was the child's natural father and agreed to pay child support, did not confer upon the father a vested right in support payments terminating when the child reached age 16 so as to bar a retroactive application of statutes raising the age with respect to the support obligation; the parties did not agree that support would terminate when the child reached age 16, and a provision to that effect in a court order into which the stipulation and agreement was incorporated also contained a reservation of the power to modify the provision.

S.D.—[State ex rel. Baxa v. Cool](#), 511 N.W.2d 829 (S.D. 1994).

U.S.—[Commissioner of Internal Revenue v. Harmon](#), 323 U.S. 44, 65 S. Ct. 103, 89 L. Ed. 60 (1944).

As to community property, generally, see C.J.S., [Husband and Wife](#) §§ 264 et seq.

As to credits and charges upon the dissolution of community property, generally, see C.J.S., [Husband and Wife](#) §§ 337 et seq.

Kan.—[Hamblin v. Marchant](#), 104 Kan. 689, 180 P. 811 (1919).

La.—[Benoit v. Benoit](#), 91 So. 3d 1015 (La. Ct. App. 1st Cir. 2012), writ denied, 98 So. 3d 838 (La. 2012).

## 16A C.J.S. Constitutional Law § 480

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### B. Particular Rights

## § 480. Vested rights of creditors; rights of purchasers at judicial sales

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2632, 2637 to 2639, 2648

**As a general rule, a lien once acquired is considered to be a vested property right which may not be impaired by subsequent legislation.**

According to the weight of authority, a lien once acquired under existing law is regarded as a vested property right which may not be impaired by subsequent legislation.<sup>1</sup> According to some authorities, however, statutory liens are not regarded as vested rights and therefore are not beyond the power of the legislature to change or repeal.<sup>2</sup>

The legislature may regulate the priority of liens thereafter created,<sup>3</sup> but it may not affect the priority of such liens as have attached before the taking effect of the act.<sup>4</sup> Acts creating liens are not to be construed retroactively so as to disturb vested rights.<sup>5</sup> The legislature may, by statute, authorize the sale of real estate to satisfy liens thereon.<sup>6</sup>

***Betterment laws.***

A statute allowing the value of his or her improvements to one ejected from land occupied by him or her under color of title is, as a general rule, constitutional,<sup>7</sup> and this is true even as to statutes giving compensation for improvements made before their enactment.<sup>8</sup>

***Vested rights of purchaser at judicial sale.***

The purchaser at a judicial sale, at least after it has been confirmed and a deed or certificate of sale has been issued to him or her, acquires a vested right,<sup>9</sup> and such a purchaser obtains a vested right to acceptance and confirmation of his or her bid where the sale has been properly made.<sup>10</sup> Before confirmation, however, a prospective purchaser has no vested interest in a property.<sup>11</sup> Property owners can claim no vested right to a special tax sale date.<sup>12</sup>

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Footnotes

- 1 U.S.—[Ginsberg v. Lindel](#), 107 F.2d 721 (C.C.A. 8th Cir. 1939).  
Ga.—[Morris v. Interstate Bond Co.](#), 180 Ga. 689, 180 S.E. 819, 100 A.L.R. 415 (1935).  
**Attachment lien**  
A lien acquired by attachment is a vested interest affording specific security for satisfaction of a debt put in suit.  
U.S.—[Bass v. Stodd](#), 357 F.2d 458 (9th Cir. 1966).  
**Assessment liens**  
A municipality had a vested right in assessment liens, and any statute that impaired or took away that right would be retroactive and invalid.  
Ohio—[State ex rel. City of South Euclid v. Zangerle](#), 145 Ohio St. 433, 31 Ohio Op. 57, 62 N.E.2d 160 (1945).
- 2 U.S.—[U. S. v. City of Philadelphia](#), 140 F.2d 406 (C.C.A. 3d Cir. 1944).  
Ind.—[Heekin Can Co. v. Porter](#), 221 Ind. 69, 46 N.E.2d 486 (1943).  
Mich.—[Baker v. State Land Office Bd.](#), 294 Mich. 587, 293 N.W. 763 (1940).
- 3 Ga.—[Buchman v. Rogers](#), 29 Ga. App. 62, 113 S.E. 230 (1922).  
La.—[Gleissner v. Hughes](#), 153 La. 133, 95 So. 529 (1922).  
N.D.—[Dunham Lumber Co. v. Gresz](#), 71 N.D. 491, 2 N.W.2d 175, 141 A.L.R. 60 (1942).
- 4 Ill.—[Thurber Art Galleries v. Rienzi Garage](#), 297 Ill. 272, 130 N.E. 747 (1921).
- 5 Wash.—[Finos v. Netherlands American Mortg. Bank](#), 147 Wash. 86, 265 P. 167 (1928).
- 6 Mont.—[Habets v. Carey Land Act Bd.](#), 126 Mont. 46, 244 P.2d 511 (1952).
- 7 Ga.—[Mills v. Geer](#), 111 Ga. 275, 36 S.E. 673 (1900).
- 8 Wis.—[Dorer v. Hood](#), 113 Wis. 607, 88 N.W. 1009 (1902).
- 9 Cal.—[Miller v. McKenna](#), 23 Cal. 2d 774, 147 P.2d 531 (1944).  
N.C.—[Matter of Green](#), 27 N.C. App. 555, 219 S.E.2d 552 (1975).  
N.D.—[Eikevik v. Lee](#), 73 N.D. 197, 13 N.W.2d 94 (1944).
- 10 Ark.—[Smith v. Spillman](#), 135 Ark. 279, 205 S.W. 107, 1 A.L.R. 136 (1918).  
Neb.—[Lancaster County v. Schwarz](#), 152 Neb. 15, 39 N.W.2d 921 (1949).
- 11 N.C.—[Matter of Green](#), 27 N.C. App. 555, 219 S.E.2d 552 (1975).
- 12 D.C.—[Coleman v. Scheve](#), 367 A.2d 135 (D.C. 1976).

## 16A C.J.S. Constitutional Law § 481

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### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### B. Particular Rights

## § 481. Vested rights of debtors; redemption laws, exemptions, and bankruptcy

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2632, 2637 to 2639, 2648

**The right of redemption and exemption privileges are not in the nature of vested rights, and an insolvent person has no vested right to a discharge upon filing a bankruptcy petition.**

The right of redemption is merely remedial, and thus it is not in the nature of a vested right and is subject to abridgement.<sup>1</sup> The general rule is that any grant or extension of the right of redemption is void as to sales made under prior judgments.<sup>2</sup> Statutes are valid which expressly provide that the right of redemption therein granted will not impair any interest already acquired in the property.<sup>3</sup> A statute which takes away, reduces the time for, or otherwise impairs a right of redemption which has already vested is unconstitutional.<sup>4</sup>

A property owner cannot usually claim a vested right to a constant length of the redemption period,<sup>5</sup> and the time during which an owner has a vested right of redemption is governed by the law in force at the time of the sale.<sup>6</sup> In the case of land purchased by the State for the nonpayment of taxes, however, the time allowed the owner to redeem may be extended by a subsequent statute as no vested rights of private persons are impaired thereby.<sup>7</sup>

A statute which limits the time for notice of expiration of the period for redemption but which allows a reasonable time for such notice is not unconstitutional as impairing vested rights.<sup>8</sup> Where absolute title to land is vested in the state or county by virtue of a tax deed, the State can provide any method it chooses for the subsequent disposition of the land<sup>9</sup> and can at any time change such method without impairing the right of any applicant to purchase or repurchase who has not complied with the existing law.<sup>10</sup> Furthermore, a person who contracts with full knowledge of existing statutory provisions with respect to redemption may not complain that such statute has infringed on his or her vested statutory rights.<sup>11</sup>

The exemption privileges of a debtor are not vested rights;<sup>12</sup> hence, it is within the power of the legislature to make property subject to execution for debts contracted or judgments entered under a previous law by which it has been exempt.<sup>13</sup> Likewise, the repeal of an exemption statute does not destroy vested rights.<sup>14</sup>

### ***Homestead rights.***

While some courts have found that a homesteader has a vested right in the homestead exemption,<sup>15</sup> other courts have considered that a homestead exemption is not such a vested right that cannot be impaired by subsequent legislation.<sup>16</sup> Under the latter view, the homestead exemption is not a vested right as between tenants in common.<sup>17</sup> Further, a creditor who issues an attachment on a homestead not previously filed as such has no vested right which is destroyed when the property is subsequently filed as a homestead so as to claim the exemption given by law.<sup>18</sup>

### ***Bankruptcy.***

Under its bankruptcy power, Congress may legislate so as to affect, modify, or perhaps destroy vested rights.<sup>19</sup> Accordingly, an insolvent has no vested right to a discharge on filing a petition, and acts passed after the petition is filed providing that a discharge in insolvency will be refused on certain conditions are constitutional.<sup>20</sup>

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#### **Footnotes**

- 1 Mich.—[Buckeye Union Fire Ins. Co. v. State](#), 383 Mich. 630, 178 N.W.2d 476 (1970).  
**Equity of redemption**  
Statute providing that waiver of "equity of redemption," or waiver using words of similar import, will be sufficient to waive statutory right of redemption did not retrospectively impair obligation of contracts or interfere with vested rights; phrase "equity of redemption" embraced statutory right of redemption from origin of statutory right of redemption.
- 2 Tenn.—[Swift v. Kirby](#), 737 S.W.2d 271 (Tenn. 1987).
- 3 Cal.—[Welsh v. Cross](#), 146 Cal. 621, 81 P. 229 (1905).
- 3 W. Va.—[State v. King](#), 64 W. Va. 546, 63 S.E. 468 (1908).
- 4 U.S.—[Prideaux v. Des Moines Joint-Stock Land Bank](#), 34 F.2d 308 (D. Minn. 1929).
- Mont.—[Lowery v. Garfield County](#), 122 Mont. 571, 208 P.2d 478 (1949).
- N.J.—[Vincent, Inc. v. Lambek](#), 9 N.J. Super. 522, 75 A.2d 748 (Ch. Div. 1950).
- 5 D.C.—[Coleman v. Scheve](#), 367 A.2d 135 (D.C. 1976).
- 6 Ark.—[Northern Road Imp. Dist. v. Meyermann](#), 169 Ark. 383, 275 S.W. 762 (1925).
- 7 Minn.—[Johnson v. Fraser](#), 112 Minn. 126, 128 N.W. 676 (1910).
- 8 Minn.—[Hutchinson v. Child](#), 164 Minn. 195, 204 N.W. 648 (1925).
- 9 N.M.—[Yates v. Hawkins](#), 1942-NMSC-029, 46 N.M. 249, 126 P.2d 476 (1942).
- N.D.—[Cota v. McDermott](#), 73 N.D. 459, 16 N.W.2d 54, 155 A.L.R. 1271 (1944).

- 10 Pa.—[Bernitsky v. Schuylkill County](#), 381 Pa. 128, 112 A.2d 120 (1955).  
 Mich.—[Baker v. State Land Office Bd.](#), 294 Mich. 587, 293 N.W. 763 (1940).  
 N.M.—[Yates v. Hawkins](#), 1942-NMSC-029, 46 N.M. 249, 126 P.2d 476 (1942).  
 Pa.—[Bernitsky v. Schuylkill County](#), 381 Pa. 128, 112 A.2d 120 (1955).  
 11 Pa.—[Bernitsky v. Schuylkill County](#), 381 Pa. 128, 112 A.2d 120 (1955).  
 12 Mich.—[Stott v. Stott Realty Co.](#), 288 Mich. 35, 284 N.W. 635 (1939).  
 Ohio—[Chandler v. Horne](#), 23 Ohio App. 1, 5 Ohio L. Abs. 3, 154 N.E. 748 (9th Dist. Summit County 1926).  
 13 N.Y.—[Laird v. Carton](#), 196 N.Y. 169, 89 N.E. 822 (1909).  
 Ohio—[Chandler v. Horne](#), 23 Ohio App. 1, 5 Ohio L. Abs. 3, 154 N.E. 748 (9th Dist. Summit County 1926).  
 Tenn.—[Majors v. Carter](#), 175 Tenn. 450, 135 S.W.2d 924 (1940).  
 As to exemption laws as impairing the obligation of contracts, see § 634.  
 14 Ala.—[Hicks v. Huggins](#), 405 So. 2d 1324 (Ala. Civ. App. 1981), writ denied, 405 So. 2d 1328 (Ala. 1981).  
 15 Wash.—[Robin L. Miller Const. Co., Inc. v. Coltran](#), 110 Wash. App. 883, 43 P.3d 67 (Div. 1 2002).  
 16 Cal.—[Taylor v. Madigan](#), 53 Cal. App. 3d 943, 126 Cal. Rptr. 376 (1st Dist. 1975).  
 Nev.—[French v. French](#), 91 Nev. 248, 533 P.2d 1357 (1975).  
 N.Y.—[Wyoming County Bank & Trust Co. v. Kiley](#), 75 A.D.2d 477, 430 N.Y.S.2d 900 (4th Dep't 1980).  
**No vested right to continuance of statute**  
 Neither a lender creditor nor a debtor had any vested right to the continuance of a particular homestead exemption statute.  
 Ill.—[Bank of Illmo v. Simmons](#), 142 Ill. App. 3d 741, 97 Ill. Dec. 4, 492 N.E.2d 207 (5th Dist. 1986).  
 17 Ill.—[Petrulionis v. Dudek](#), 113 Ill. App. 2d 398, 252 N.E.2d 23 (1st Dist. 1969).  
 18 Mont.—[Wall v. Duggan](#), 76 Mont. 239, 245 P. 953 (1926).  
 19 U.S.—[Securities and Exchange Commission v. Albert & Maguire Securities Co., Inc.](#), 378 F. Supp. 906 (E.D. Pa. 1974).  
 20 U.S.—[In re Seaholm](#), 136 F. 144 (C.C.A. 1st Cir. 1905).  
**Application for discharge**  
 A petition in bankruptcy is merely an application for a discharge, and thus prior to receiving a discharge, a debtor has no vested right in having the law remain as it was at the time he or she filed the petition.  
 U.S.—[In re Gibbons](#), 311 B.R. 402 (S.D. N.Y. 2004), aff'd, 155 Fed. Appx. 534 (2d Cir. 2005).



## 16A C.J.S. Constitutional Law § 482

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### Constitutional Law

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### B. Particular Rights

## § 482. Zoning, business, and corporate regulations as divesting rights

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2630 to 2632, 2641, 2642

**When enacted as a proper exercise of the police power, laws regulating property and business are not invalid as an impairment of vested rights.**

While a statute or ordinance that attempts to impose unreasonable restrictions on the use of private property is void as an attempt at the impairment of vested rights,<sup>1</sup> a property owner can acquire no vested right to the use of his or her property for a particular purpose freed from public control under the police power.<sup>2</sup> Thus, there is no vested right to use private property for particular purposes.<sup>3</sup> Similarly, no person has a vested right to make a market of the street or other public place,<sup>4</sup> or, in the absence of a franchise, to use the streets for other commercial purposes,<sup>5</sup> such as for the operation of public conveyances.<sup>6</sup>

The owner of a building or other structure may have a vested right in the property which prevents its summary destruction as a nuisance,<sup>7</sup> and denial of the right to repair a building lawfully erected so as to keep it fit for use is a denial of the enjoyment of a vested property right.<sup>8</sup> Conversely, there is no vested right to the use of property in such a manner that it constitutes a nuisance,<sup>9</sup> injures the public health or morals,<sup>10</sup> or works an injury to the property rights of others.<sup>11</sup>

Although one has an inalienable right to carry on his or her business free from all unlawful interference,<sup>12</sup> statutes and ordinances enacted within the scope of the police power for the taxation and regulation of professions, trades, and business do not constitute an infringement of vested rights.<sup>13</sup> Likewise, one has no vested right to the continuance of a business monopoly.<sup>14</sup> A right to an assumed business name acquired in accordance with statutory requirements is vested.<sup>15</sup>

### ***Zoning laws.***

As a matter of general zoning law, a permit applicant does not have a vested right in the existing classification of his or her land; instead, the right to establish a particular use may be summarily terminated by an amendment that reclassifies the land and outlaws the use in question.<sup>16</sup> Accordingly, property owners have no vested right to be free from zoning restrictions that forbid prospective uses.<sup>17</sup>

### ***Registration acts.***

The filing of a title registration application creates no vested right which is disturbed by a subsequently enacted statute requiring a fee for the entry of the title registration decree.<sup>18</sup> A mortgagee, who has a lien duly filed, has no vested right in the registration law under which the lien has been filed.<sup>19</sup>

### ***Trade with foreign nations.***

No individual has a vested right to trade with foreign nations;<sup>20</sup> likewise, no one has a legal right to the maintenance of an existing custom rate or duty.<sup>21</sup>

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### **Footnotes**

- 1 U.S.—*U.S. v. Locke*, 471 U.S. 84, 105 S. Ct. 1785, 85 L. Ed. 2d 64 (1985).  
Minn.—*Young v. Mall Inv. Co.*, 172 Minn. 428, 215 N.W. 840, 55 A.L.R. 461 (1927).  
N.J.—*Stockhold v. Jackson Tp.*, 136 N.J.L. 264, 55 A.2d 241 (N.J. Ct. Err. & App. 1947).
- 2 Cal.—*Plotkin v. Sajahtera, Inc.*, 106 Cal. App. 4th 953, 131 Cal. Rptr. 2d 303 (2d Dist. 2003).  
Ill.—*Tri-County Landfill Co. v. Illinois Pollution Control Bd.*, 41 Ill. App. 3d 249, 353 N.E.2d 316 (2d Dist. 1976).  
Tex.—*City of Farmers Branch v. Hawnco, Inc.*, 435 S.W.2d 288 (Tex. Civ. App. Dallas 1968), writ refused n.r.e., (Mar. 5, 1969).  
**Significantly important state interest**  
Vested property rights may not be altered by a subsequent legislative enactment except in those rare instances where an alteration is necessary to promote a significantly important state interest.  
Cal.—*In re Marriage of Griffis*, 187 Cal. App. 3d 156, 231 Cal. Rptr. 510 (5th Dist. 1986).  
**Financial loss**  
A financial loss gives no vested right to continue a business, the location of which may be regulated under the police power.  
Ariz.—*City of Tucson v. Arizona Mortuary*, 34 Ariz. 495, 272 P. 923 (1928).
- 3 Ill.—*County of Kendall v. Aurora Nat. Bank Trust No. 1107*, 219 Ill. App. 3d 841, 162 Ill. Dec. 469, 579 N.E.2d 1283 (2d Dist. 1991).  
N.J.—*Neumann v. City of Hoboken*, 82 N.J.L. 275, 82 A. 511 (N.J. Sup. Ct. 1912).  
Or.—*Kroner v. City of Portland*, 116 Or. 141, 240 P. 536 (1925).  
**Adult entertainment center**

U.S.—*Amico v. New Castle County*, 101 F.R.D. 472 (D. Del. 1984), judgment aff'd, 770 F.2d 1066 (3d Cir. 1985).

**Gambling house**

La.—*Larrabee v. Landry*, 1 La. App. 629, 1925 WL 3630 (1st Cir. 1925).

**House of prostitution**

La.—*City of New Orleans v. White*, 143 La. 487, 78 So. 745 (1918).

**Slaughterhouse**

Mass.—*City of Revere v. Riseman*, 280 Mass. 76, 181 N.E. 716 (1932).

**Mere ownership or leasehold of property**

The mere ownership or leasehold of property which could be utilized for the conduct of business does not constitute a nonterminable right.

Ark.—*Arkansas Com'n on Pollution Control and Ecology v. Land Developers, Inc.*, 284 Ark. 179, 680 S.W.2d 909 (1984).

Cal.—*Ex parte Mares*, 75 Cal. App. 2d 798, 171 P.2d 762 (1st Dist. 1946).

Tex.—*West v. City of Waco*, 275 S.W. 282 (Tex. Civ. App. Waco 1925), aff'd, 116 Tex. 472, 294 S.W. 832 (1927).

**Newsstand**

Iowa—*Cowin v. City of Waterloo*, 237 Iowa 202, 21 N.W.2d 705, 163 A.L.R. 1327 (1946).

Idaho—*Yellow Cab Taxi Service v. City of Twin Falls*, 68 Idaho 145, 190 P.2d 681 (1948).

Me.—*Steves v. Robie*, 139 Me. 359, 31 A.2d 797 (1943).

Tex.—*City of Wichita Falls v. Bowen*, 143 Tex. 45, 182 S.W.2d 695, 154 A.L.R. 1434 (1944).

**Automobile wrecker**

Automobile wrecker operators do not have a vested right to use city streets to carry on a wrecker business, and a city ordinance prohibiting private garage owners from towing wrecked automobiles off the streets and bestowing such duties on a city's police department is not invalid as injuring or destroying vested property rights of the garage owners.

Tex.—*Liegl v. City of San Antonio*, 207 S.W.2d 441 (Tex. Civ. App. San Antonio 1947), writ refused n.r.e.

Colo.—*City and County of Denver v. Thrailkill*, 125 Colo. 488, 244 P.2d 1074 (1952).

Idaho—*Yellow Cab Taxi Service v. City of Twin Falls*, 68 Idaho 145, 190 P.2d 681 (1948).

Miss.—*Allen v. City of Kosciusko*, 207 Miss. 343, 42 So. 2d 388 (1949).

Mo.—*Lux v. Milwaukee Mechanics Ins. Co.*, 322 Mo. 342, 15 S.W.2d 343 (1929).

Wis.—*State v. Sutherland*, 166 Wis. 511, 166 N.W. 14 (1918).

**Billboards**

The owner of billboards has a vested property right which cannot be taken by an ordinance forbidding their maintenance unless it jeopardizes the safety, welfare, health, or morals of the community.

Tex.—*Cain v. State*, 105 Tex. Crim. 204, 287 S.W. 262 (1926).

Tex.—*Crossman v. City of Galveston*, 112 Tex. 303, 247 S.W. 810, 26 A.L.R. 1210 (1923).

Ill.—*Tri-County Landfill Co. v. Illinois Pollution Control Bd.*, 41 Ill. App. 3d 249, 353 N.E.2d 316 (2d Dist. 1976).

Iowa—*Cowin v. City of Waterloo*, 237 Iowa 202, 21 N.W.2d 705, 163 A.L.R. 1327 (1946).

Neb.—*City of Lyons v. Betts*, 184 Neb. 746, 171 N.W.2d 792 (1969).

Minn.—*State v. Lane*, 126 Minn. 78, 147 N.W. 951 (1914).

N.J.—*Spagnuolo v. Bonnet*, 16 N.J. 546, 109 A.2d 623 (1954).

N.Y.—*Hathorn v. Natural Carbonic Gas Co.*, 194 N.Y. 326, 87 N.E. 504 (1909).

Okla.—*Anderson-Prichard Oil Corp. v. Corporation Com'n*, 1951 OK 234, 205 Okla. 672, 241 P.2d 363 (1951).

U.S.—*Wallace v. Ford*, 21 F. Supp. 624 (N.D. Tex. 1937).

Tex.—*Marrs v. Railroad Commission*, 142 Tex. 293, 177 S.W.2d 941 (1944).

U.S.—*Collins v. State of Tex.*, 223 U.S. 288, 32 S. Ct. 286, 56 L. Ed. 439 (1912).

Cal.—*People v. Mel Mack Co.*, 53 Cal. App. 3d 621, 126 Cal. Rptr. 505 (4th Dist. 1975).

Fla.—*State v. White*, 194 So. 2d 601 (Fla. 1967).

La.—*Louisiana Bd. of Examiners in Watchmaking v. Morrow*, 188 So. 2d 160 (La. Ct. App. 4th Cir. 1966).

**Licensees**

An individual, having obtained the license required to engage in a particular profession or vocation, has a fundamental vested right to continue in that activity, and the licensee, having obtained such a fundamental vested right, is entitled to certain procedural protections greater than those accorded an applicant, but the licensee does not possess a substantive vested right to continue to pursue his or her occupation.

Cal.—*Hughes v. Board of Architectural Examiners*, 17 Cal. 4th 763, 72 Cal. Rptr. 2d 624, 952 P.2d 641 (1998).

14 Mont.—*Young v. Board of Trustees of Broadwater County High School*, 90 Mont. 576, 4 P.2d 725 (1931).

Okla.—*First Nat. Bank v. Oklahoma Sav. and Loan Bd.*, 1977 OK 171, 569 P.2d 993 (Okla. 1977).

**Municipal bond holders**

Holders of municipal bonds issued by a city to finance an intrastate bridge project had nothing more than two covenants issued by the city entitling them to the exclusive right to revenues from the bridge and stipulating that the city would not voluntarily permit construction of the bridge that interfered with their revenue rights and, as such, they possessed no constitutionally protected interest in a monopoly over traffic traveling on the bridge, whether they chose to label their interest a franchise, an easement, a lien, or simply a contract right.

U.S.—*Jackson Sawmill Co., Inc. v. U.S.*, 580 F.2d 302 (8th Cir. 1978).

15 N.Y.—*Fawcett v. Andrews*, 203 A.D. 591, 197 N.Y.S. 208 (1st Dep't 1922).

16 Conn.—*754 Orange Ave., Inc. v. City of West Haven, Conn.*, 761 F.2d 105 (2d Cir. 1985).

**No vested right in continuation of zoning ordinance**

Ill.—*Constantine v. Village of Glen Ellyn*, 217 Ill. App. 3d 4, 159 Ill. Dec. 303, 575 N.E.2d 1363 (2d Dist. 1991).

**Failure to obtain permit**

A developer who never had a building or construction permit never had a vested right against any zoning changes that might restrict the development of the land.

U.S.—*Fernhoff v. Tahoe Regional Planning Agency*, 622 F. Supp. 121 (D. Nev. 1985).

17 N.H.—*Socha v. City of Manchester*, 126 N.H. 289, 490 A.2d 794 (1985).

18 Mass.—*Hollingsworth & Vose Co. v. Recorder of Land Court*, 262 Mass. 45, 159 N.E. 543 (1928).

19 Tex.—*Hill v. Wolfe*, 184 S.W.2d 489 (Tex. Civ. App. El Paso 1944), writ refused w.o.m., (Oct. 18, 1944).

20 U.S.—*U. S. v. Yoshida Intern., Inc.*, 526 F.2d 560 (C.C.P.A. 1975); *Seneca Grape Juice Corp. v. U. S.*, 71 Cust. Ct. 131, 367 F. Supp. 1396 (Cust. Ct. 1973).

21 U.S.—*U. S. v. Yoshida Intern., Inc.*, 526 F.2d 560 (C.C.P.A. 1975).

## 16A C.J.S. Constitutional Law § 483

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### Constitutional Law

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### B. Particular Rights

## § 483. Vested rights of employer and employee

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2632, 2640, 2641

**Generally, employers have no vested right to hire and discharge employees unrestrictedly, and employees have no vested right to unemployment compensation or seniority rights. Under particular circumstances, an employee has vested rights in his or her pension.**

Employers have no vested right to hire or discharge employees unrestrictedly.<sup>1</sup> Moreover, an employer has no vested interest in the labor of his or her employees,<sup>2</sup> and no vested rights are violated by a statute which requires employers to pay their employees in money and at stated intervals.<sup>3</sup>

Similarly, employees have no vested right to unemployment compensation.<sup>4</sup> It has also been found that there is no vested right in employees' seniority rights under existing agreements.<sup>5</sup> Furthermore, no person has a vested right entitling him or her to have unchanged the existing rules of law concerning an employer's responsibility for the personal injury or death of an employee.<sup>6</sup>

***Pensions; nonpublic employees.***

In some jurisdictions, nonpublic employees have vested property interests in their retirement benefits.<sup>7</sup> The right to such benefits vests in the employee when he or she acquires an irrevocable interest in the retirement fund created by his or her own contributions, the contributions of his or her employer, or both.<sup>8</sup>

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Footnotes

- 1 U.S.—*N.L.R.B. v. Carlisle Lumber Co.*, 94 F.2d 138 (C.C.A. 9th Cir. 1937).  
N.J.—*Kingston Trap Rock Co. v. International Union of Operating Engineers*, Local No. 825, 825-A and 825-B, 129 N.J. Eq. 570, 19 A.2d 661 (Ct. Err. & App. 1941).  
Wash.—*Spokane Hotel Co. v. Younger*, 113 Wash. 359, 194 P. 595 (1920).  
As to vested rights of public officers and employees, see § 494.
- 2 N.J.—*Kingston Trap Rock Co. v. International Union of Operating Engineers*, Local No. 825, 825-A and 825-B, 129 N.J. Eq. 570, 19 A.2d 661 (Ct. Err. & App. 1941).
- 3 Ky.—*Commonwealth v. Reinecke Coal Min. Co.*, 117 Ky. 885, 25 Ky. L. Rptr. 2027, 79 S.W. 287 (1904).
- 4 Idaho—*Talley v. Unemployment Compensation Division of Industrial Accident Board*, 63 Idaho 644, 124 P.2d 784 (1942).  
Ky.—*Shelley v. National Carbon Co.*, 285 Ky. 502, 148 S.W.2d 686 (1941).  
Pa.—*Department of Labor and Industry v. Unemployment Compensation Bd. of Review*, 159 Pa. Super. 577, 49 A.2d 278 (1946).
- 5 U.S.—*Napier v. System Federation No. 91, Railway Emp. Dept., American Federation of Labor*, 127 F. Supp. 874 (W.D. Ky. 1955).  
Wyo.—*Samuelson v. Brotherhood of Railroad Trainmen, Rocky Mountain Lodge No. 852*, 60 Wyo. 316, 151 P.2d 347 (1944).  
**Rights against returning veterans**  
Junior employees promoted to positions to which a returning veteran would have seniority had he not spent time in the armed services have no vested rights to such position.  
U.S.—*Muscianese v. U.S. Steel Corp.*, 354 F. Supp. 1394 (E.D. Pa. 1973).
- 6 U.S.—*Arizona Copper Co. v. Hammer*, 250 U.S. 400, 39 S. Ct. 553, 63 L. Ed. 1058, 6 A.L.R. 1537 (1919).  
Kan.—*Ellis v. Kroger Grocery & Baking Co.*, 159 Kan. 213, 152 P.2d 860, 155 A.L.R. 546 (1944).  
N.J.—*Flynn v. Union City*, 32 N.J. Super. 518, 108 A.2d 629 (App. Div. 1954).
- 7 U.S.—*In re Dunn*, 5 B.R. 156 (Bankr. N.D. Tex. 1980).
- 8 Cal.—*In re Marriage of Sommers*, 53 Cal. App. 3d 509, 126 Cal. Rptr. 220 (1st Dist. 1975).

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Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### B. Particular Rights

## § 484. Vested rights of corporations or stockholders

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### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2632, 2640, 2641

**As a general rule, the legislature cannot abrogate or impair vested rights of stockholders of a corporation or of a corporation under its charter, but there is no vested right to an indefinite continuance of all existing laws relating to corporations.**

As a general rule, the legislature cannot abrogate or impair vested rights of stockholders of a corporation<sup>1</sup> or vested rights of a corporation under its charter.<sup>2</sup> There are, however, no vested rights in a charter itself which preclude its alteration or repeal where that right has been expressly reserved under existing statute or in the grant,<sup>3</sup> but in the exercise of the reserved right, the legislature must not destroy or impair other vested property rights.<sup>4</sup> Vested property rights are not affected by a charter amendment changing the method of voting.<sup>5</sup> Moreover, a mere voting member of a charitable corporation, devoted entirely to public uses, is not deprived of any vested interest when he or she is deprived of the right to vote<sup>6</sup> or by amendments to the charter of a charitable corporation which merely clarify its original purposes and provide for a more efficient administration of its affairs,<sup>7</sup> such as by reducing the number of directors and changing the manner of selecting them.<sup>8</sup>

A stockholder has no vested right in having a corporate by-law remain in force indefinitely.<sup>9</sup> Similarly, a corporation or its stockholders have no vested right to an indefinite continuance of all existing laws relating to corporations<sup>10</sup> particularly where the subsequent statute is enacted under the police power.<sup>11</sup> Thus, a statute which authorizes a merger of one corporation with another does not deprive a stockholder of vested rights where the assets are not decreased nor the corporate contracts changed.<sup>12</sup>

Likewise, stockholders have no vested rights which preclude a change of their rights in conformity with statutes in existence when the stock has been issued,<sup>13</sup> and statutory regulations, enacted after the existence of a corporation, which alter the requirements for stock transfers, do not impair vested rights where the regulations operate prospectively.<sup>14</sup>

Although there is some authority to the contrary,<sup>15</sup> the right of a preferred stockholder to unpaid cumulative dividends has generally been considered a vested right,<sup>16</sup> which may not be divested or destroyed without the stockholder's consent either by a subsequent reorganization or by legislative enactment.<sup>17</sup> The corporation, however, has been found authorized to fund or satisfy stockholders rights with respect to dividends in arrears by the issuance of stock therefor, or otherwise by amendment of the certificate of incorporation, provided such amendment preserves and holds inviolate the vested rights of the stockholders.<sup>18</sup>

#### ***Corporate name.***

When a corporation lawfully acquires a corporate name under the laws in force at the time of its creation, its right to such name is a vested right which cannot be taken away or impaired without its consent by any subsequent legislation which does not come within the police power of the State.<sup>19</sup> Where a corporation has adopted the name of an older corporation in such a manner as to confuse the public, it has no vested right to the use of the name.<sup>20</sup>

#### ***Foreign corporations.***

The constitutional protection of vested rights extends to foreign corporations, and a foreign corporation which has been duly admitted to do business within the state cannot be deprived of vested rights which it has acquired therein<sup>21</sup> except by forfeiture for legal cause.<sup>22</sup> However, a privilege or license to do business granted by a state to a foreign corporation, whether express or implied,<sup>23</sup> does not confer a vested right.<sup>24</sup> The State is not thereafter perpetually confined to the conditions it makes at the time it grants permission,<sup>25</sup> and it may subsequently restrict, modify, or revoke the permission.<sup>26</sup> Statutes regulating the doing of business in the state by foreign corporations and compliance therewith by such corporations do not give them a vested right to do business without legislative change,<sup>27</sup> accordingly, they may be subjected to additional or other regulations,<sup>28</sup> such as restrictions on the power to acquire and hold realty,<sup>29</sup> or the payment of further fees.<sup>30</sup>

#### ***Insolvent corporations.***

The exercise of the jurisdiction of the court in supervising the winding up and dissolution of a corporation does not violate any vested right of its stockholders even though the articles of incorporation provide that all or substantially all of the corporate property cannot be disposed of unless approved by vote of all the shareholders or by their written consent, which has not been given.<sup>31</sup> An act which authorizes a reduction of liability to members of an insolvent association in proportion to its assets in order to render it solvent does not take from the member vested rights where provision is made for a division of any excess which is realized from the assets.<sup>32</sup> While liability in favor of the creditors of banking institutions or corporations cannot be imposed retroactively on the members thereof, since to do so would impair vested rights,<sup>33</sup> a liability which has been imposed by constitutional and statutory provisions on the stockholders of banking institutions or corporations in favor of the creditors



thereof is nevertheless a property right which cannot be destroyed or impaired to the prejudice of existing creditors by the repeal or modification of the constitutional and statutory provisions.<sup>34</sup>

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## Footnotes

- 1 Del.—*Hartford Acc. & Indem. Co. v. W. S. Dickey Clay Mfg. Co.*, 26 Del. Ch. 411, 24 A.2d 315 (1942).  
N.J.—*Buckley v. Cuban American Sugar Co.*, 129 N.J. Eq. 322, 19 A.2d 820 (Ch. 1940).  
N.C.—*Bank of Pinehurst v. Derby*, 218 N.C. 653, 12 S.E.2d 260 (1940).  
Tex.—*Gano v. Filter-Aid Co.*, 414 S.W.2d 480 (Tex. Civ. App. Austin 1967).
- 2 U.S.—*Coombes v. Getz*, 285 U.S. 434, 52 S. Ct. 435, 76 L. Ed. 866 (1932).  
Md.—*Mayor and City Council of Baltimore v. Canton Co. of Baltimore*, 186 Md. 618, 47 A.2d 775 (1946).  
N.Y.—*Breslav v. New York & Queens Elec. Light & Power Co.*, 249 A.D. 181, 291 N.Y.S. 932 (2d Dep't 1936), *aff'd*, 273 N.Y. 593, 7 N.E.2d 708 (1937).  
**Destruction by public service commission**  
The legislature may not authorize public service commissions to destroy vested rights of public service corporations.  
Md.—*The President and Commissioners of Port Deposit v. West*, 155 Md. 124, 141 A. 517 (1928).
- 3 Del.—*Hartford Acc. & Indem. Co. v. W. S. Dickey Clay Mfg. Co.*, 26 Del. Ch. 411, 24 A.2d 315 (1942).  
Ill.—*Western Foundry Co. v. Wicker*, 403 Ill. 260, 85 N.E.2d 722, 8 A.L.R.2d 878 (1949).  
Ohio—*Opdyke v. Security Sav. & Loan Co.*, 59 Ohio L. Abs. 257, 99 N.E.2d 84 (Ct. App. 8th Dist. Cuyahoga County 1951), judgment *aff'd*, 157 Ohio St. 121, 47 Ohio Op. 97, 105 N.E.2d 9 (1952).  
**Opening new banks**  
La.—*Whitney Nat. Bank in Jefferson Parish v. James*, 189 So. 2d 430 (La. Ct. App. 1st Cir. 1966).  
**Renewal of corporation**  
A statute authorizing the renewal of a corporation creates no contract or vested right to a renewal either as between the State and the corporation or as among the stockholders.  
Minn.—*State ex rel. G. M. Gustafson Co. v. Crookston Trust Co.*, 222 Minn. 17, 22 N.W.2d 911 (1946).
- 4 U.S.—*Coombes v. Getz*, 285 U.S. 434, 52 S. Ct. 435, 76 L. Ed. 866 (1932).  
Del.—*Hartford Acc. & Indem. Co. v. W. S. Dickey Clay Mfg. Co.*, 26 Del. Ch. 411, 24 A.2d 315 (1942).  
Md.—*Mayor and Council of Crisfield v. Public Service Commission*, 183 Md. 179, 36 A.2d 705 (1944).  
Va.—*Craddock-Terry Co. v. Powell*, 181 Va. 417, 25 S.E.2d 363 (1943).
- 5 Mich.—*Stott v. Stott Realty Co.*, 288 Mich. 35, 284 N.W. 635 (1939).  
Va.—*O'Brien v. Socony Mobil Oil Co.*, 207 Va. 707, 152 S.E.2d 278 (1967).  
**Exclusive voting power**  
The vested right of common stockholders who had exclusive voting power is not violated by a charter amendment giving voting power to both common and preferred stockholders.  
Pa.—*Metzger v. George Washington Memorial Park*, 380 Pa. 350, 110 A.2d 425 (1955).
- 6 Vt.—*Langrock v. Porter Hospital, Inc.*, 126 Vt. 233, 227 A.2d 291 (1967).
- 7 Vt.—*Langrock v. Porter Hospital, Inc.*, 126 Vt. 233, 227 A.2d 291 (1967).
- 8 Ky.—*Price v. A.D. Price Memorial Hospital*, 288 Ky. 364, 156 S.W.2d 180 (1941).
- 9 U.S.—*Superior Bedding Co. v. Serta Associates, Inc.*, 353 F. Supp. 1143 (N.D. Ill. 1972).  
**Change in by-law valid**  
La.—*Tilly v. North Louisiana Pure Milk Producers Assoc., Inc.*, 349 So. 2d 1002 (La. Ct. App. 2d Cir. 1977).  
Cal.—*Drapeau v. Fullerton Securities Corp.*, 8 Cal. 2d 189, 64 P.2d 944 (1937).  
Fla.—*Hopkins v. The Vizcayans*, 582 So. 2d 689 (Fla. 3d DCA 1991).  
Mo.—*State v. Thomaston*, 726 S.W.2d 448 (Mo. Ct. App. W.D. 1987).  
**Change in organization or structure**  
A change of an insurance company from an assessment to a legal reserve company, under a statute so authorizing, which continues the contracts of former policy holders under an assessment plan, does not deprive such policy holders of vested rights.  
Iowa—*Wall v. Bankers Life Co. of Des Moines*, 208 Iowa 1053, 223 N.W. 257 (1929).
- 10 **Issuance of stock**

There is no vested right in the stockholders of a corporation to subscribe for the issue of new stock authorized by a statute to fund its debts.

Mass.—*Brown v. Boston & M.R.R.*, 233 Mass. 502, 124 N.E. 322 (1919).

Ind.—*State v. Richcreek*, 167 Ind. 217, 77 N.E. 1085 (1906).

N.J.—*Bingham v. Savings Investment & Trust Co. of East Orange*, 102 N.J. Eq. 302, 140 A. 321 (Ct. Err. & App. 1928).

N.Y.—*Alpren v. Consolidated Edison Co. of New York*, 168 Misc. 381, 5 N.Y.S.2d 254 (Sup 1938).

N.Y.—*Jay Ronald Co. v. Marshall Mortg. Corporation*, 291 N.Y. 227, 52 N.E.2d 108 (1943).

N.Y.—*Long Island Home, Ltd. v. Whalen*, 62 A.D.2d 23, 404 N.Y.S.2d 53 (3d Dep't 1978), judgment aff'd, 47 N.Y.2d 767, 417 N.Y.S.2d 459, 391 N.E.2d 295 (1979).

Va.—*O'Brien v. Socony Mobil Oil Co.*, 207 Va. 707, 152 S.E.2d 278 (1967).

Del.—*Shanik v. White Sewing Mach. Corp.*, 25 Del. Ch. 154, 15 A.2d 169 (1940), decree aff'd by, 25 Del. Ch. 371, 19 A.2d 831 (1941).

N.Y.—*Wiedersum v. Atlantic Cement Products*, 261 A.D. 305, 25 N.Y.S.2d 496 (2d Dep't 1941).

N.C.—*Clark v. Henrietta Mills*, 219 N.C. 1, 12 S.E.2d 682 (1941).

Del.—*Morris v. American Public Utilities Co.*, 14 Del. Ch. 136, 122 A. 696 (1923).

#### **Financial condition of corporation**

The vested rights of preferred shareholders to cumulative dividends are not governed by the financial condition of the corporation, and the corporation may not employ years of poor business to destroy preferences which they had previously pledged to holders of preferred shares.

Ohio—*Schaffner v. Standard Boiler & Plate Iron Co.*, 150 Ohio St. 454, 38 Ohio Op. 316, 83 N.E.2d 192 (1948).

N.J.—*Buckley v. Cuban American Sugar Co.*, 129 N.J. Eq. 322, 19 A.2d 820 (Ch. 1940).

Or.—*Lorntsen v. Union Fishermen's Co-op. Packing Co.*, 71 Or. 540, 143 P. 621 (1914).

Mo.—*Empire Trust Co. v. Empire Finance Corp.*, 226 Mo. App. 298, 41 S.W.2d 847 (1931).

N.D.—*Asbury Hospital v. Cass County*, 72 N.D. 359, 7 N.W.2d 438 (1943).

U.S.—*Seaboard Air Line Ry. Co. v. Railroad Commission of Alabama*, 155 F. 792 (C.C.M.D. Ala. 1907).

N.D.—*Asbury Hospital v. Cass County*, 72 N.D. 359, 7 N.W.2d 438 (1943).

U.S.—*Home Indem. Co. of New York v. O'Brien*, 104 F.2d 413 (C.C.A. 6th Cir. 1939).

N.D.—*Asbury Hospital v. Cass County*, 72 N.D. 359, 7 N.W.2d 438 (1943).

U.S.—*Home Indem. Co. of New York v. O'Brien*, 104 F.2d 413 (C.C.A. 6th Cir. 1939).

N.D.—*Asbury Hospital v. Cass County*, 72 N.D. 359, 7 N.W.2d 438 (1943).

Mo.—*State ex rel. Crow v. Firemen's Fund Ins. Co.*, 152 Mo. 1, 52 S.W. 595 (1899).

Ind.—*Adams Exp. Co. v. State*, 161 Ind. 328, 67 N.E. 1033 (1903).

N.D.—*Asbury Hospital v. Cass County*, 72 N.D. 359, 7 N.W.2d 438 (1943).

N.D.—*Asbury Hospital v. Cass County*, 72 N.D. 359, 7 N.W.2d 438 (1943).

Kan.—*Cudahy Packing Co. v. Denton*, 79 Kan. 368, 97 P. 439 (1908), on reh'g, 79 Kan. 368, 99 P. 601 (1909).

Cal.—*In re Mayellen Apartments*, 134 Cal. App. 2d 298, 285 P.2d 943 (2d Dist. 1955).

#### **Creditors acquire vested rights**

Creditors who have dealt with a corporation on the faith of a statute enacted to secure equality in the distribution of assets of a failing corporation do acquire vested rights.

N.Y.—*Dalziel v. Rosenfeld*, 265 N.Y. 76, 191 N.E. 841 (1934).

Tex.—*Prudential Bldg. & Loan Ass'n v. Shaw*, 119 Tex. 228, 26 S.W.2d 168 (Comm'n App. 1930).

N.C.—*Bank of Pinehurst v. Derby*, 218 N.C. 653, 12 S.E.2d 260 (1940).

S.D.—*Federal Deposit Ins. Corp. of Washington, D. C. v. Ensteness*, 68 S.D. 467, 4 N.W.2d 209 (1942).

Tex.—*Gossett v. Hamilton*, 133 S.W.2d 297 (Tex. Civ. App. Fort Worth 1939), writ dismissed, judgment correct.

## 16A C.J.S. Constitutional Law § 485

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### B. Particular Rights

## § 485. Vested rights in existing tax laws

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑2633, 2640

**In general, a taxpayer has no vested rights in a taxing statute; hence, he or she has no vested right in the continuance of particular tax laws, deductions, or exemptions.**

A taxpayer does not have a vested right in a tax statute or in the continuance of any tax law.<sup>1</sup> Therefore, a taxpayer has no vested right in the taxing statutes not being amended or changed.<sup>2</sup> In line with this rule, there can be no vested right in the continuance of any particular tax,<sup>3</sup> scheme or method of taxation,<sup>4</sup> method of measurement,<sup>5</sup> amount or rate of a tax,<sup>6</sup> or in a tax collector's commissions on taxes.<sup>7</sup> A right granted a taxpayer by statute to a credit or refund of taxes may similarly be repealed.<sup>8</sup>

As a general rule, deductions allowable in the computation of a tax<sup>9</sup> and exemptions from taxation do not confer vested rights.<sup>10</sup> Accordingly, they may be modified or repealed by the legislature unless they have been granted under such circumstances that their repeal would impair vested rights under a contract.<sup>11</sup>

There is no vested right that the basis of property will not be changed in determining a gain or loss for income tax purposes<sup>12</sup> or that the property subject to estate or inheritance taxes will not be changed.<sup>13</sup> Furthermore, there is no vested right securing one against the imposition of new or additional taxes or their levy on a new basis.<sup>14</sup>

A taxation statute, which by its terms is made retroactive, is within the power of the legislature and is not void as disturbing vested rights.<sup>15</sup> Thus, taxes or assessments may be levied for improvements already made,<sup>16</sup> or the basis of assessment may be changed after the original levy or assessment.<sup>17</sup>

The authority of a city to tax property,<sup>18</sup> or of a county to tax property owned by an irrigation district,<sup>19</sup> or the right of a county to collect a poll tax, is not a vested right.<sup>20</sup> Furthermore, a county does not acquire a vested right in property by virtue of a tax sale to it for the purpose of perpetuating the lien of the tax and in aid of its collection.<sup>21</sup>

### *Altering method of collecting taxes.*

A tax laid by authority of law or an assessment for benefits conferred by a local improvement creates a duty and obligation which may be enforced by any means which the legislature may from time to time adopt, and there is no vested right in a mode of procedure for collection.<sup>22</sup> Therefore, an act which provides for the discovery of property not listed for taxation, and its assessment and the collection of taxes thereon,<sup>23</sup> or which otherwise modifies or provides a new or additional remedy for collecting taxes,<sup>24</sup> is not objectionable on the ground that it divests vested rights even though the new remedies adopted are made applicable to taxes already delinquent.<sup>25</sup>

### *Validating illegal assessments and levies.*

Taxes and assessments beyond the power of the legislature to impose at the time of the passage of the statute authorizing them may not be validated by subsequent curative acts.<sup>26</sup> On the other hand, defective or illegal assessments or levies of taxes within the legislative power may be so validated<sup>27</sup> unless such validation would result in disturbing vested rights.<sup>28</sup>

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### Footnotes

- 1 Mich.—*In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38*, 490 Mich. 295, 806 N.W.2d 683 (2011); *Midland Cogeneration Venture Ltd. Partnership v. Naftaly*, 489 Mich. 83, 803 N.W.2d 674 (2011).  
N.Y.—*Capital Financial Corp. v. Commissioner of Taxation and Finance*, 218 A.D.2d 230, 639 N.Y.S.2d 501 (3d Dep't 1996).  
Tenn.—*Cincinnati, N. O. & T. P. Ry. Co. v. Rhea County*, 194 Tenn. 167, 250 S.W.2d 60 (1952).  
**No vested right in assessment for taxes**  
Tenn.—*Penn-Dixie Cement Corp. v. Kizer*, 194 Tenn. 412, 250 S.W.2d 904 (1952).
- 2 Ill.—*Commonwealth Edison Co. v. Will County Collector*, 305 Ill. App. 3d 819, 239 Ill. Dec. 41, 713 N.E.2d 572 (3d Dist. 1999), *aff'd*, 196 Ill. 2d 27, 255 Ill. Dec. 482, 749 N.E.2d 964 (2001).  
Kan.—*Mizer v. Kansas Bostwick Irr. Dist. No. 2*, 172 Kan. 157, 239 P.2d 370 (1951).  
Mich.—*Syntex Laboratories v. Department of Treasury*, 233 Mich. App. 286, 590 N.W.2d 612 (1998).
- 3 Ill.—*Application of Skidmore*, 75 Ill. 2d 33, 25 Ill. Dec. 634, 387 N.E.2d 290 (1979).  
Kan.—*Mizer v. Kansas Bostwick Irr. Dist. No. 2*, 172 Kan. 157, 239 P.2d 370 (1951).
- 4 Kan.—*Mizer v. Kansas Bostwick Irr. Dist. No. 2*, 172 Kan. 157, 239 P.2d 370 (1951).  
Okla.—*In re Bass' Estate*, 1947 OK 362, 200 Okla. 14, 190 P.2d 800 (1947).

- 5 Tex.—*General Dynamics Corp. v. Sharp*, 919 S.W.2d 861 (Tex. App. Austin 1996), writ denied, (Sept. 4, 1997).
- 6 Mo.—*Fisher v. Reorganized School Dist. No. R-V of Grundy County*, 567 S.W.2d 647 (Mo. 1978).  
N.Y.—*Beaumont Co. v. State*, 125 Misc. 2d 87, 477 N.Y.S.2d 272 (Sup 1984).  
Okla.—*In re Bass' Estate*, 1947 OK 362, 200 Okla. 14, 190 P.2d 800 (1947).
- Contributions to compensation fund**  
An employer has no right to have the law remain unchanged with respect to the contribution rate to the unemployment compensation fund.  
Ala.—*Department of Indus. Relations v. West Boylston Mfg. Co.*, 253 Ala. 67, 42 So. 2d 787 (1949).
- Excise tax**  
The legislature can change or increase the excise or license tax during the term for which it is imposed without thereby interfering with vested rights.  
Cal.—*American States Water Service Co. of Cal. v. Johnson*, 31 Cal. App. 2d 606, 88 P.2d 770 (3d Dist. 1939).
- 7 Ga.—*Hale v. Davison*, 231 Ga. 505, 202 S.E.2d 411 (1973).
- 8 Cal.—*Southern Service Co. v. Los Angeles County*, 15 Cal. 2d 1, 97 P.2d 963 (1940).
- 9 Mo.—*State ex rel. Meyer Bros. Drug Co. v. Koeln*, 282 Mo. 438, 222 S.W. 389 (1920).
- Mortgage recording tax credits**  
N.Y.—*Capital Financial Corp. v. Commissioner of Taxation and Finance*, 218 A.D.2d 230, 639 N.Y.S.2d 501 (3d Dep't 1996).
- Inheritance tax**  
A testator had no vested right in the privilege to have his wife's annuity deducted from the gross estate, and Congress could at pleasure change the deductions allowable regardless of when the claims have arisen.  
U.S.—*Helvering v. U.S. Trust Co.*, 111 F.2d 576 (C.C.A. 2d Cir. 1940).
- 10 U.S.—*People ex rel. Clyde v. Gilchrist*, 262 U.S. 94, 43 S. Ct. 501, 67 L. Ed. 883 (1923).  
Mo.—*La-Z-Boy Chair Co. v. Director of Economic Development*, 983 S.W.2d 523 (Mo. 1999).  
Ohio—*Herrick v. Lindley*, 59 Ohio St. 2d 22, 13 Ohio Op. 3d 13, 391 N.E.2d 729 (1979).
- Erroneous interpretation**  
Taxpayers have no vested right to rely on an erroneous interpretation of a tax statute exempting them from taxation.  
Ala.—*State v. Maddox Tractor & Equipment Co.*, 260 Ala. 136, 69 So. 2d 426 (1953).  
Tex.—*Grocers Supply Co., Inc. v. Sharp*, 978 S.W.2d 638 (Tex. App. Austin 1998).
- 11 Ala.—*Ware Lodge No. 435, A.F. & A.M. v. Harper*, 236 Ala. 334, 182 So. 59 (1938).
- Tax exempt status**  
Tax exempt status granted in a charter before the adoption of the provision of the state constitution and its predecessor, allowing the legislature to alter, amend, or revoke any charter of incorporation, constitutes a "vested right" that cannot be divested by subsequent legislation.  
Ala.—*Opinion of the Justices*, 598 So. 2d 1362, 75 Ed. Law Rep. 672 (Ala. 1992).
- 12 U.S.—*Sehtam Corporation v. Commissioner of Internal Revenue*, 125 F.2d 655 (C.C.A. 2d Cir. 1942).
- Basis of depreciation of property acquired by gift**  
U.S.—*Wilson Bros. & Co. v. Commissioner of Internal Revenue*, 124 F.2d 606 (C.C.A. 9th Cir. 1941).
- 13 U.S.—*Commissioner of Internal Revenue v. Washer*, 127 F.2d 446 (C.C.A. 6th Cir. 1942).
- 14 U.S.—*People of Puerto Rico v. Federal Land Bank of Baltimore*, 108 F.2d 275 (C.C.A. 1st Cir. 1939).  
Cal.—*American States Water Service Co. of Cal. v. Johnson*, 31 Cal. App. 2d 606, 88 P.2d 770 (3d Dist. 1939).  
Kan.—*Mizer v. Kansas Bostwick Irr. Dist. No. 2*, 172 Kan. 157, 239 P.2d 370 (1951).
- 15 U.S.—*People of Puerto Rico v. Federal Land Bank of Baltimore*, 108 F.2d 275 (C.C.A. 1st Cir. 1939).  
D.C.—*Maryland & Virginia Milk Producers' Ass'n v. District of Columbia*, 119 F.2d 787 (App. D.C. 1941).  
Kan.—*Mizer v. Kansas Bostwick Irr. Dist. No. 2*, 172 Kan. 157, 239 P.2d 370 (1951).
- 16 Vt.—*Durkee v. City of Barre*, 81 Vt. 530, 71 A. 819 (1909).
- 17 Ill.—*People ex rel. Lee v. Chicago & E.I.R. Co.*, 248 Ill. 118, 93 N.E. 761 (1910).  
Ky.—*Durrett v. Davidson*, 122 Ky. 851, 29 Ky. L. Rptr. 401, 93 S.W. 25 (1906).
- Taxpayer has no vested interest in initial assessment**  
N.J.—*Orban v. Alexandria Tp.*, 21 N.J. Tax 1, 2003 WL 22103483 (2003).

- 18 Utah—*Plutus Mining Co. v. Orme*, 76 Utah 286, 289 P. 132 (1930).
- 19 Cal.—*Mariposa County v. Merced Irr. Dist.*, 32 Cal. 2d 467, 196 P.2d 920 (1948).
- 20 N.C.—*Dixon v. Board of County Com'rs*, 200 N.C. 215, 156 S.E. 852 (1931).
- 21 Idaho—*Paradis v. Smith*, 38 Idaho 374, 222 P. 779 (1923).
- 22 N.J.—*Vincent, Inc. v. Lambek*, 9 N.J. Super. 522, 75 A.2d 748 (Ch. Div. 1950).
- N.D.—*Cota v. McDermott*, 73 N.D. 459, 16 N.W.2d 54, 155 A.L.R. 1271 (1944).
- Ohio—*State ex rel. City of South Euclid v. Zangerle*, 145 Ohio St. 433, 31 Ohio Op. 57, 62 N.E.2d 160 (1945).
- As to there being no vested right in mere remedies, generally, see § 498 et seq.
- 23 Okla.—*Anderson v. Ritterbusch*, 1908 OK 250, 22 Okla. 761, 98 P. 1002 (1908).
- 24 U.S.—*League v. State of Tex.*, 184 U.S. 156, 22 S. Ct. 475, 46 L. Ed. 478 (1902).
- D.C.—*Maryland & Virginia Milk Producers' Ass'n v. District of Columbia*, 119 F.2d 787 (App. D.C. 1941).
- N.Y.—*Intercounty Operating Corp. v. Nassau County*, 181 Misc. 390, 48 N.Y.S.2d 730 (Sup 1943), judgment aff'd, 267 A.D. 957, 47 N.Y.S.2d 321 (2d Dep't 1944), judgment aff'd, 293 N.Y. 688, 56 N.E.2d 299 (1944).
- 25 U.S.—*League v. State of Tex.*, 184 U.S. 156, 22 S. Ct. 475, 46 L. Ed. 478 (1902).
- N.Y.—*Intercounty Operating Corp. v. Nassau County*, 181 Misc. 390, 48 N.Y.S.2d 730 (Sup 1943), judgment aff'd, 267 A.D. 957, 47 N.Y.S.2d 321 (2d Dep't 1944), judgment aff'd, 293 N.Y. 688, 56 N.E.2d 299 (1944).
- 26 Ark.—*House v. Road Improvement Dist. No. 4*, 154 Ark. 218, 242 S.W. 68 (1922).
- Fla.—*New Smyrna Inlet Dist. v. Esch*, 103 Fla. 24, 137 So. 1 (1931).
- As to curative acts as applied to the levy and assessment of taxes as retrospective and ex post facto laws, see § 667.
- 27 Iowa—*Chicago, R.I. & P. Ry. Co. v. Streepy*, 211 Iowa 1334, 236 N.W. 24 (1931).
- S.D.—*Alatalo v. Shaver*, 45 S.D. 163, 186 N.W. 872 (1922).
- Tenn.—*Cincinnati, N. O. & T. P. Ry. Co. v. Rhea County*, 194 Tenn. 167, 250 S.W.2d 60 (1952).
- 28 Iowa—*Benshoof v. City of Iowa Falls*, 175 Iowa 30, 156 N.W. 898 (1916).
- Mortgage foreclosure**
- One claiming through a sheriff's deed in a mortgage foreclosure action as against one claiming title under a void tax deed had a vested right in the property of which he was not divested by the general provisions of a curative act.
- Cal.—*Miller v. McKenna*, 23 Cal. 2d 774, 147 P.2d 531 (1944).

## 16A C.J.S. Constitutional Law § 486

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### B. Particular Rights

## § 486. Common-law and statutory causes of action as vested rights; particular defenses

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑2648

**Causes of action which have not yet accrued are not vested and may be abolished, but an existing right of action which has accrued under the rules of the common law or in accordance with its principles is a vested property right.**

Causes of action which have not yet accrued are not vested and may be abolished.<sup>1</sup> The legislature has power to create, modify, or abolish rights to sue, and the enactment of a statute delineating or even abolishing a cause of action before it has accrued deprives a plaintiff of no vested right.<sup>2</sup> Conversely, an existing right of action which has accrued to a person,<sup>3</sup> or which springs from contract, is a vested property right in the same sense in which tangible things are property and may not be destroyed or impaired by legislation.<sup>4</sup> Thus, a legislature may not abolish, for instance, existing common-law rights of action for injuries to the person caused by negligence or for death caused by negligence<sup>5</sup> although it has been stated that no one has a vested right in the continued existence of an immutable body of negligence law.<sup>6</sup>

A right of action in favor of the public may be destroyed since no rights vested in private persons would in this way be impaired.<sup>7</sup> There is no vested right or vested cause of action against a state government or its agencies in view of the doctrine of sovereign immunity.<sup>8</sup> Moreover, a right given by statute to sue a state or the United States is not a vested right and may be withdrawn at



any time.<sup>9</sup> However, a right of action against the State for the negligent or tortious acts of its officers, agents, or employees, which has accrued under a statute waiving the State's immunity from liability for such acts, as distinguished from immunity from suit, has been found to be a vested right which the repeal of the statute waiving the State's immunity will not impair.<sup>10</sup>

### *Rights of action created by statute.*

Generally, a right of action created by statute may be taken away at any time, even after it has accrued<sup>11</sup> and after proceedings have been commenced to enforce it,<sup>12</sup> the rule being that it is not vested and may be taken away at any time prior to final judgment.<sup>13</sup> In some cases, however, it has been found that a right of action accrued under a statute is a vested right and that it may not be impaired by a subsequent statutory change.<sup>14</sup>

### *Particular defenses as vested rights.*

A vested ground of defense is as fully protected from being cut off or destroyed by an act of the legislature as is a vested cause of action.<sup>15</sup> A statutory defense, however, though a valuable right, is not a vested right, and the holder thereof may be deprived of it.<sup>16</sup> Thus, the legislature may deprive a party of technical defenses involving no substantial equities,<sup>17</sup> and it may abolish defenses as to causes of action arising in the future.<sup>18</sup>

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#### Footnotes

- 1 U.S.—[Ducharme v. Merrill-National Laboratories](#), 574 F.2d 1307 (5th Cir. 1978).  
Ala.—[Mayo v. Rouselle Corp.](#), 375 So. 2d 449, 27 U.C.C. Rep. Serv. 709 (Ala. 1979).  
Ga.—[Synalloy Corp. v. Newton](#), 254 Ga. 174, 326 S.E.2d 470 (1985).  
Ind.—[Dague v. Piper Aircraft Corp.](#), 275 Ind. 520, 418 N.E.2d 207, 25 A.L.R.4th 629 (1981).  
La.—[Burmaster v. Gravity Drainage Dist. No. 2 of St. Charles Parish](#), 366 So. 2d 1381 (La. 1978).  
**Inchoate cause of action**  
The right to sue on an inchoate cause of action, i.e., one that has not yet accrued, is not a vested right because no one has a vested right in the common law, which the legislature may substantively change prospectively.  
Fla.—[Raphael v. Shecter](#), 18 So. 3d 1152 (Fla. 4th DCA 2009).  
**Authority to abolish**  
Although the legislature may abolish a cause of action, it may not exercise its authority in a manner that is unreasonably discriminatory or violates a constitutional mandate.  
Okla.—[Loyal Order of Moose, Lodge 1785 v. Cavaness](#), 1977 OK 70, 563 P.2d 143, 93 A.L.R.3d 1234 (Okla. 1977).  
**Permissible legislative objective**  
A common-law right of action may be abrogated without providing a reasonable substitute if a permissible legislative objective is pursued.  
Minn.—[Haney v. International Harvester Co.](#), 294 Minn. 375, 201 N.W.2d 140 (1972).  
2 Ga.—[Couch v. Parker](#), 280 Ga. 580, 630 S.E.2d 364 (2006).  
3 Ala.—[Mayo v. Rouselle Corp.](#), 375 So. 2d 449, 27 U.C.C. Rep. Serv. 709 (Ala. 1979).  
La.—[Ebinger v. Venus Const. Corp.](#), 65 So. 3d 1279 (La. 2011).  
Md.—[Dua v. Comcast Cable of Maryland, Inc.](#), 370 Md. 604, 805 A.2d 1061 (2002).  
Ohio—[Wilson v. AC&S, Inc.](#), 169 Ohio App. 3d 720, 2006-Ohio-6704, 864 N.E.2d 682 (12th Dist. Butler County 2006), cause dismissed, 113 Ohio St. 3d 1457, 2007-Ohio-1787, 864 N.E.2d 645 (2007).  
Tenn.—[Mills v. Wong](#), 155 S.W.3d 916 (Tenn. 2005).  
Wis.—[Hunter v. School Dist. of Gale-Ettrick-Trempealeau](#), 90 Wis. 2d 523, 280 N.W.2d 313 (Ct. App. 1979), decision aff'd, 97 Wis. 2d 435, 293 N.W.2d 515 (1980).



**Springing from contract or common law**

An accrued cause of action is a "vested right" when it springs from contract or from the principles of the common law.

Wash.—1000 *Virginia Ltd. Partnership v. Vertecs Corp.*, 158 Wash. 2d 566, 146 P.3d 423 (2006), as corrected, (Nov. 15, 2006).

**Triggering event**

The right to commence an action becomes vested when an event occurs that triggers the right to sue for damages, and this right may not be defeated by later legislation.

Fla.—*Williams v. American Optical Corp.*, 985 So. 2d 23, 41 A.L.R.6th 683 (Fla. 4th DCA 2008), aff'd, 73 So. 3d 120 (Fla. 2011).

**Asbestos claim**

Plaintiffs had an accrued, and thus vested, right to sue for damages prior to the enactment of the Asbestos and Silica Compensation Fairness Act, arising from their alleged exposure to asbestos resulting in asbestos-related disease, even if the plaintiffs lacked the accompanying malignancy or physical impairment, as prior to the Act, a diagnosis of asbestos-related disease triggered the accrual of a cause of action, and the development of particular impairment symptoms as described in the Act had never been the legal factor in determining "manifestation" or accrual.

Fla.—*American Optical Corp. v. Spiewak*, 73 So. 3d 120 (Fla. 2011).

**Date of accrual**

Where a new substantive law essentially extinguishes a cause of action, the date that the cause of action accrues is a crucial determining point in considering, for purposes of retroactivity analysis, whether the law modifies or suppresses the effects of a right already acquired; once a cause of action accrues, a party has a vested right in the cause of action that a new substantive law cannot take away.

La.—*Anderson v. Avondale Industries, Inc.*, 798 So. 2d 93 (La. 2001).

4 U.S.—*Hutton v. Autoridad Sobre Hogares De La Capital*, 78 F. Supp. 988 (D.P.R. 1948).

Minn.—*Andrews v. Benson*, 476 N.W.2d 194 (Minn. Ct. App. 1991).

Tenn.—*Morris v. Gross*, 572 S.W.2d 902 (Tenn. 1978).

5 Ky.—*Saylor v. Hall*, 497 S.W.2d 218 (Ky. 1973).

**Vested right in cause of action for negligence**

Plaintiffs have a vested right, the impairment of which will preclude the retroactive application of a statute, in a cause of action for negligence.

Wis.—*Modica v. Verhulst*, 195 Wis. 2d 633, 536 N.W.2d 466, 102 Ed. Law Rep. 810 (Ct. App. 1995).

**Strict liability**

A cause of action in strict tort liability is a vested property right protected by the guarantee of due process.

La.—*Ginn v. Woman's Hosp. Foundation, Inc.*, 770 So. 2d 428 (La. Ct. App. 1st Cir. 2000), writ denied, 784 So. 2d 647 (La. 2001).

**A.L.R. Library**

Validity and construction of statute or ordinance limiting the kinds or amount of actual damages recoverable in tort action against governmental unit, 43 A.L.R.4th 19.

6 Pa.—*Pennock v. Lenzi*, 882 A.2d 1057 (Pa. Commw. Ct. 2005).

7 N.Y.—*Jefferson County v. Oswego County*, 102 A.D. 232, 92 N.Y.S. 709 (4th Dep't 1905), aff'd, 186 N.Y. 555, 79 N.E. 1108 (1906).

S.D.—*State Highway Commission On Behalf Of State v. Wiczorek*, 248 N.W.2d 369 (S.D. 1976).

8 Pa.—*Kastner v. Com., Pennsylvania Dept. of Transp.*, 46 Pa. Commw. 97, 405 A.2d 1133 (1979).

**School district had vested right in immunity from liability**

A school district which had been sued after a child was assaulted on a school bus by a fellow student had a vested right in immunity from liability for wanton and willful conduct which was granted by the Local Governmental and Governmental Employees Tort Immunity Act at the time the claim arose; thus, a subsequent amendment to the Act which allowed the plaintiff to defeat the immunity of the public entity or public employee who causes injury by a willful and wanton failure to supervise an activity could not be applied retroactively to a claim against the district.

Ill.—*D.M. ex rel. C.H. v. National School Bus Service, Inc.*, 305 Ill. App. 3d 735, 238 Ill. Dec. 950, 713 N.E.2d 196, 141 Ed. Law Rep. 263 (2d Dist. 1999).

- 9 U.S.—*Woodson v. Deutsche Gold und Silber Scheideanstalt Vormals Roessler*, 292 U.S. 449, 54 S. Ct. 804, 78 L. Ed. 1357 (1934).  
N.J.—*Perillo v. Dreher*, 126 N.J. Super. 264, 314 A.2d 74 (App. Div. 1974).  
Wash.—*Haddenham v. State*, 87 Wash. 2d 145, 550 P.2d 9 (1976).
- 10 Mich.—*Minty v. State*, 336 Mich. 370, 58 N.W.2d 106 (1953).
- 11 U.S.—*Scott v. Midwest, Ltd.*, 944 F. Supp. 699 (C.D. Ill. 1996).  
Ariz.—*Brown Wholesale Elec. Co. v. H.S. Laster Co.*, 152 Ariz. 90, 730 P.2d 267 (Ct. App. Div. 1 1986).  
Ga.—*Teasley v. Mathis*, 243 Ga. 561, 255 S.E.2d 57 (1979).  
Wash.—*1000 Virginia Ltd. Partnership v. Vertecs Corp.*, 158 Wash. 2d 566, 146 P.3d 423 (2006), as corrected, (Nov. 15, 2006).  
**Wrongful death**  
The wrongful death cause of action is not an inherent right, nor a vested right, for constitutional purposes, but rather one within the discretion of the Legislature to grant, withhold, or restrict.  
Cal.—*Scott v. Thompson*, 184 Cal. App. 4th 1506, 109 Cal. Rptr. 3d 846 (4th Dist. 2010), as modified on denial of reh'g, (June 25, 2010).
- 12 U.S.—*Scott v. Midwest, Ltd.*, 944 F. Supp. 699 (C.D. Ill. 1996).  
Iowa—*Kemp v. Day & Zimmerman, Inc.*, 239 Iowa 829, 33 N.W.2d 569 (1948).  
Tex.—*National Carloading Corp. v. Phoenix-El Paso Exp.*, 142 Tex. 141, 176 S.W.2d 564 (1943).
- 13 U.S.—*Cooperativa de Ahorro y Credito Aguada v. Kidder, Peabody & Co.*, 993 F.2d 269, 37 Fed. R. Evid. Serv. 904, 25 Fed. R. Serv. 3d 982 (1st Cir. 1993).  
Wash.—*Haddenham v. State*, 87 Wash. 2d 145, 550 P.2d 9 (1976).
- 14 Fla.—*Talmadge v. District School Bd. of Lake County*, 406 So. 2d 1127, 1 Ed. Law Rep. 1046 (Fla. 5th DCA 1981).  
Idaho—*Stucki v. Loveland*, 94 Idaho 621, 495 P.2d 571 (1972).  
La.—*Davis v. St. Francisville Country Manor, LLC*, 928 So. 2d 549 (La. Ct. App. 1st Cir. 2006), writ denied, 930 So. 2d 25 (La. 2006), writ denied, 955 So. 2d 699 (La. 2007).  
Md.—*Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 805 A.2d 1061 (2002).  
Pa.—*Gibson v. Com.*, 490 Pa. 156, 415 A.2d 80 (1980).  
**Failure to exercise rights**  
Constitution protects the accrual of a cause of action so that a person's failure to exercise rights under a statute prior to the statute's repeal does not result in the loss of those rights.  
Okla.—*Williams Companies, Inc. v. Dunkelgod*, 2012 OK 96, 295 P.3d 1107 (Okla. 2012).  
**Cause of action for overtime wages**  
Employees of an armored car agency had a vested right in an existing cause of action for overtime wages which could not be extinguished by the retroactive application of the 1990 amendment to the Minimum Wage Act without violating due process.  
Pa.—*Sanders v. Loomis Armored, Inc.*, 418 Pa. Super. 375, 614 A.2d 320 (1992).  
**Wrongful death**  
A cause of action created by the Wrongful Death Act inures to the plaintiff as a vested right.  
N.M.—*Torres v. Sierra*, 89 N.M. 441, 1976-NMCA-064, 553 P.2d 721 (Ct. App. 1976).
- 15 Kan.—*Osborn v. Electric Corp. of Kansas City*, 23 Kan. App. 2d 868, 936 P.2d 297 (1997).  
La.—*Falgout v. Dealers Truck Equipment Co.*, 748 So. 2d 399 (La. 1999).  
Tex.—*Coulter v. Melady*, 489 S.W.2d 156 (Tex. Civ. App. Texarkana 1972), writ refused n.r.e., (Mar. 14, 1973).  
**Right of repose**  
Fla.—*Williams v. American Optical Corp.*, 985 So. 2d 23, 41 A.L.R.6th 683 (Fla. 4th DCA 2008), aff'd, 73 So. 3d 120 (Fla. 2011).  
**Vested defense not abolished**  
Ky.—*General Refractories Co. v. Henderson*, 313 Ky. 613, 232 S.W.2d 846 (1950).  
As to defenses as within the protection of the obligation of contracts, see § 628.
- 16 Mich.—*Cona v. Avondale School Dist.*, 303 Mich. App. 123, 842 N.W.2d 277, 301 Ed. Law Rep. 524 (2013), appeal denied, 497 Mich. 887, 854 N.W.2d 724 (2014).
- 17 Ga.—*Bullard v. Holman*, 184 Ga. 788, 193 S.E. 586, 113 A.L.R. 763 (1937).  
Kan.—*Osborn v. Electric Corp. of Kansas City*, 23 Kan. App. 2d 868, 936 P.2d 297 (1997).

18

Tex.—*Louisiana Ry. & Nav. Co. v. State*, 298 S.W. 462 (Tex. Civ. App. Dallas 1927), writ granted, (Dec. 14, 1927) and aff'd, 7 S.W.2d 71 (Tex. Comm'n App. 1928).

U.S.—*Chicago, R.I. & P.R. Co. v. Cole*, 251 U.S. 54, 40 S. Ct. 68, 64 L. Ed. 133 (1919).

Mich.—*Michigan Mobile Homeowners Ass'n v. Bank of Commonwealth*, 56 Mich. App. 206, 223 N.W.2d 725 (1974).

N.H.—*Martineau v. Waldman*, 93 N.H. 386, 42 A.2d 735 (1945).

**Defenses in negligence actions**

The legislative determination that a party may not assert a defense in a cause of action for negligence does not impair contracts or disturb vested rights.

Pa.—*Solonoski by Solonoski v. Yuhas*, 657 A.2d 137 (Pa. Commw. Ct. 1995).

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## 16A C.J.S. Constitutional Law § 487

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### B. Particular Rights

## § 487. Vested rights in sentencing, pardon, and parole

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2630, 2647

**Generally, there is no vested right to a pardon, parole, or suspended sentence, and a prisoner has no vested right to a reduction in his or her term of imprisonment for good conduct. Vested rights in particular forfeitures, fines, or penalties do not arise until a final judgment is rendered.**

Generally, a criminal defendant has no vested interest in a specific term of imprisonment or in the designation a particular crime receives.<sup>1</sup> Further, an individual has no vested right to a pardon,<sup>2</sup> a parole,<sup>3</sup> or a suspended sentence.<sup>4</sup> There is likewise no vested right to incarceration in any particular place of institutionalization,<sup>5</sup> no vested right in a specific security classification,<sup>6</sup> and no vested right to payment for labor performed while incarcerated.<sup>7</sup> Finally, a prisoner has no vested right to a reduction in his or her term of imprisonment for good conduct.<sup>8</sup>

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### Footnotes

- <sup>1</sup> Cal.—[People v. Turnage](#), 55 Cal. 4th 62, 144 Cal. Rptr. 3d 489, 281 P.3d 464 (2012).  
<sup>2</sup> U.S.—[U. S. ex rel. Forino v. Garfinkel](#), 166 F.2d 887 (C.C.A. 3d Cir. 1948).

- 3 Ky.—[Neal v. Hines](#), 180 Ky. 714, 203 S.W. 518 (1918).  
 Me.—[Still v. State](#), 256 A.2d 670 (Me. 1969).  
 Wash.—[Butler v. Cranor](#), 38 Wash. 2d 471, 230 P.2d 306 (1951).  
**No vested right to parole panel of particular size**  
 An inmate did not have a vested right in having his parole eligibility determined by a panel of a particular size, and thus a statutory change in the number of members of the Board of Pardons and Paroles required to permit parole could be applied to the inmate without violating the ex post facto rule where the change did not alter any of the determinants of parole timing or eligibility.  
 Tex.—[Nabelek v. Garrett](#), 2003 WL 21710243 (Tex. App. Houston 14th Dist. 2003).  
**Term of imprisonment**  
 A prisoner has no vested right to have the term of imprisonment which he or she is serving fixed or to remain fixed at less than the maximum term prescribed by law.  
 U.S.—[Hayes v. Field](#), 298 F. Supp. 309 (C.D. Cal. 1969).  
 4 Iowa—[Pagano v. Bechly](#), 211 Iowa 1294, 232 N.W. 798 (1930).  
 5 U.S.—[Pigg v. Patterson](#), 370 F.2d 101 (10th Cir. 1966).  
 6 Md.—[Campbell v. Cushwa](#), 133 Md. App. 519, 758 A.2d 616 (2000).  
 7 Ky.—[State Board of Charities and Corrections v. Hays](#), 190 Ky. 147, 227 S.W. 282 (1920).  
 8 U.S.—[Aderhold v. Perry](#), 59 F.2d 379 (C.C.A. 5th Cir. 1932); [Cooper v. U.S. Bd. of Parole](#), 337 F. Supp. 235 (E.D. Ark. 1972).  
**No vested right to early release**  
 Tenn.—[Kaylor v. Bradley](#), 912 S.W.2d 728 (Tenn. Ct. App. 1995).  
**Right may vest if approved and officially entered in file**  
 A prison inmate's claim that the governor and department of corrections had approved him for early release on the ground of "orderly and peaceful" behavior, but that early release was thereafter denied due to a discontinuation of a particular early release program, was sufficient to state a section 1983 cause of action based on possible due process violations; if the inmate's commutation had been approved and officially entered into his institutional file, he may have had a vested right in an early release date.  
 U.S.—[Tierney v. Black](#), 774 F.2d 863 (8th Cir. 1985).

## 16A C.J.S. Constitutional Law § 488

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### B. Particular Rights

## § 488. Privileges and franchises as vested rights

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑2641

**As a general rule, there are no vested rights in statutory privileges and exemptions though there are vested rights in franchises.**

As a general rule, there are no vested rights in statutory privileges and exemptions.<sup>1</sup> Moreover, the recognition that a privilege exists until prohibited by the legislature does not entitle those who choose to exercise that privilege to assume that the legislature will not act to limit or prohibit it in the future.<sup>2</sup>

On the other hand, there are vested property rights in franchises.<sup>3</sup> Therefore, while a franchise may be condemned under the power of eminent domain on making compensation,<sup>4</sup> and, in common with all other property, is subject to regulation under the police power,<sup>5</sup> additional requirements for its exercise may not be imposed.<sup>6</sup> It may not be repealed or impaired<sup>7</sup> unless the power to do so is reserved in the grant.<sup>8</sup>

Where the grant of a franchise has not been acted on,<sup>9</sup> or where acts remain to be performed before certain corporate powers granted to individuals can be exercised, no vested right exists in such franchise or other corporate rights.<sup>10</sup>

*Public service corporation franchises.*

A franchise or right in the nature of a contract granted to a corporation to supply a utility service or to use public property for a public purpose, when acted on, becomes a vested property right.<sup>11</sup> Although there is authority to the contrary,<sup>12</sup> there is generally no vested right in a certificate of public convenience and necessity.<sup>13</sup> A public service corporation may be required by statute or ordinance to make changes in the character and location of its tracks or mains,<sup>14</sup> subject, however, to reasonable compensation for the expenditures required.<sup>15</sup> Utilities have a vested right to maintain their lines on public highway rights-of-way where the line is there before the way has come under the municipality's control.<sup>16</sup>

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Footnotes

- 1 Minn.—*Ridgewood Development Co. v. State*, 294 N.W.2d 288 (Minn. 1980).  
Neb.—*Alcoholic Resocialization Conditioning Help, Inc. v. State*, 206 Neb. 788, 295 N.W.2d 281 (1980).  
**Right to telephone service.**  
U.S.—*Teleco, Inc. v. Southwestern Bell Telephone Co.*, 392 F. Supp. 692 (W.D. Okla. 1974), *aff'd*, 511 F.2d 949 (10th Cir. 1975).
- 2 Or.—*Brusco Towboat Co. v. State, By and Through Straub*, 284 Or. 627, 589 P.2d 712 (1978).
- 3 N.C.—*Elizabeth City v. Banks*, 150 N.C. 407, 64 S.E. 189 (1909).  
Vt.—*State v. Gibbs*, 82 Vt. 526, 74 A. 229 (1909).
- 4 N.Y.—*Tilton v. City of Utica*, 60 N.Y.S.2d 249 (Sup 1946).
- 5 Vt.—*Town of Waterbury v. Central Vermont Ry. Co.*, 93 Vt. 461, 108 A. 423 (1919).
- 6 Cal.—*Postal Telegraph-Cable Co. v. Railroad Commission of California*, 200 Cal. 463, 254 P. 258 (1927).  
N.J.—*Rockland Electric Co. v. Borough of Montvale*, 104 N.J.L. 480, 141 A. 673 (N.J. Sup. Ct. 1928).  
N.Y.—*Darling v. Service Transp. Corporation*, 118 Misc. 811, 194 N.Y.S. 902 (Sup 1922).
- 7 Cal.—*City of Petaluma v. Pacific Tel. & Tel. Co.*, 44 Cal. 2d 284, 282 P.2d 43 (1955).  
Md.—*Mayor and City Council of Baltimore v. Canton Co. of Baltimore*, 186 Md. 618, 47 A.2d 775 (1946).  
Mich.—*Michigan Public Service Co. v. City of Cheboygan*, 324 Mich. 309, 37 N.W.2d 116 (1949).
- 8 Md.—*City of Havre de Grace v. Harlow*, 129 Md. 265, 98 A. 852 (1916).  
Tex.—*Southwestern Telegraph & Telephone Co. v. City of Dallas*, 174 S.W. 636 (Tex. Civ. App. Dallas 1915), writ refused, (May 3, 1916) and writ dismissed, 248 U.S. 590, 39 S. Ct. 7, 63 L. Ed. 435 (1918).
- 9 S.C.—*Atlantic Coast Line R. Co. v. Caughman*, 89 S.C. 472, 72 S.E. 18 (1911).
- 10 Iowa—*Vale v. Messenger*, 184 Iowa 553, 168 N.W. 281 (1918).  
Minn.—*Carlson v. Pearson*, 145 Minn. 125, 176 N.W. 346 (1920).
- 11 Cal.—*City of Petaluma v. Pacific Tel. & Tel. Co.*, 44 Cal. 2d 284, 282 P.2d 43 (1955).  
Mich.—*Michigan Public Service Co. v. City of Cheboygan*, 324 Mich. 309, 37 N.W.2d 116 (1949).  
N.Y.—*DeWald Const. Corp. v. Consolidated Edison Co. of New York, Inc.*, 58 Misc. 2d 89, 294 N.Y.S.2d 571 (N.Y. City Civ. Ct. 1968).
- 12 Wash.—*Northwest Greyhound Lines v. Department of Transp. of State of Wash.*, 34 Wash. 2d 157, 207 P.2d 903 (1949).
- 13 Cal.—*Luxor Cab Co. v. Cahill*, 21 Cal. App. 3d 551, 98 Cal. Rptr. 576 (1st Dist. 1971).  
Miss.—*Oliphant v. Carthage Bank*, 224 Miss. 386, 80 So. 2d 63 (1955).  
Pa.—*Slater v. Pennsylvania Public Utility Commission*, 173 Pa. Super. 404, 98 A.2d 743 (1953).  
**No vested right in certificate of public good**  
Vt.—*Petition of Quechee Service Co., Inc.*, 166 Vt. 50, 690 A.2d 354 (1996).  
**Application of facts**  
A holder of a common carrier's certificate had no vested right in a hearing examiner's application of the facts to arrive at a conclusion of law on an application for a certificate of public convenience and necessity to

operate as a private contract carrier, and thus the common carrier could not complain that the commission's conclusion was the exact opposite of its hearing examiner.

Fla.—[Sentinel Star Express Co. v. Florida Public Service Commission](#), 322 So. 2d 503 (Fla. 1975).

14 Md.—[Anne Arundel County Com'rs v. United Ry. & Elec. Co.](#), 109 Md. 377, 72 A. 542 (1909).

N.D.—[Bismarck Water Supply Co. v. City of Bismarck](#), 23 N.D. 352, 137 N.W. 34 (1912).

15 Iowa—[Snouffer v. Cedar Rapids & M. City R. Co.](#), 118 Iowa 287, 92 N.W. 79 (1902).

Md.—[Anne Arundel County Com'rs v. United Ry. & Elec. Co.](#), 109 Md. 377, 72 A. 542 (1909).

16 Ariz.—[State ex rel. Herman v. Electrical Dist. No. 2 of Pinal County](#), 106 Ariz. 242, 474 P.2d 833 (1970).

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## 16A C.J.S. Constitutional Law § 489

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### B. Particular Rights

## § 489. Licenses and permits as vested

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑2641

**Generally, there is no vested right in the possession or issuance of a license or permit although under particular circumstances, the deprivation of an existing license or permit may interfere with vested rights.**

Generally, there is no vested right in a license or permit.<sup>1</sup> A constitutionally protected vested right does not arise from one's merely being in pursuit of a license and engaging in an effort to satisfy all applicable requirements for licensure.<sup>2</sup> Thus, an applicant for a license does not acquire a vested right to the issuance of such a license<sup>3</sup> and acquires no vested interest merely by filing his or her application.<sup>4</sup> However, the submission of a proper application for a permit gives an applicant a vested right to consideration of the application under the law in existence at the time the application is filed.<sup>5</sup>

An applicant who fails to meet the requirements for licensing has no vested right to be licensed.<sup>6</sup> Similarly, vested rights cannot be acquired in reliance upon an invalid permit.<sup>7</sup>

A license ordinarily carries no property right free from impairment by subsequent legislative action.<sup>8</sup> It has been said that a licensee under a scheme of federal regulation acquires no vested rights which immunize it from reasonable regulation by an

administrative agency.<sup>9</sup> Under particular circumstances, the deprivation of an existing license interferes with existing vested rights,<sup>10</sup> such as where the licensee or permittee has made expenditures in reliance on a license.<sup>11</sup> However, it has been found in other situations that the revocation of a license does not impair vested rights.<sup>12</sup>

The protection of a vested property right in a business permit generally must yield to the State's concern for the public health and safety and its authority to legislate for the protection of the public.<sup>13</sup>

The proper question for the consideration of the issue of vested rights within the context of amendments to statutory law impacting government-issued permit is whether the act as applied will interfere with rights which had vested or liabilities which had accrued at the time it took effect.<sup>14</sup> The good faith reliance of the concerned parties upon the then-existing state of the law is a consideration in determining whether rights have vested, within the context of amendments to statutory law impacting government-issued permits.<sup>15</sup>

### ***Sign and billboard permits.***

Although a billboard sign company may have vested First Amendment rights to construct billboard signs within particular locations at the time of an application for a permit, and such vested rights cannot be divested by retroactive application of newly enacted ordinances or statutes, such signs are still subject to restrictions or regulation as to size, setback, and safety requirements if the restrictions or regulations were valid on the date that the rights were vested.<sup>16</sup> It has also been held that a county did not act in bad faith in denying sign permits to an advertising sign operator, so as to give rise to a vested right in the sign permits that could be the basis for a constitutional challenge despite the passage of a new sign ordinance, where there was no evidence that the ordinance was amended for the purpose of thwarting the operator's attempt to secure the permits.<sup>17</sup>

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### Footnotes

- 1 Cal.—*Los Alamitos Gen. Hosp., Inc. v. Lackner*, 86 Cal. App. 3d 417, 149 Cal. Rptr. 98 (2d Dist. 1978).  
Ill.—*LaSalle Nat. Bank & Trust Co. v. City of Chicago*, 128 Ill. App. 3d 656, 83 Ill. Dec. 819, 470 N.E.2d 1239 (1st Dist. 1984).  
La.—*Eudy v. Jefferson Parish Council*, 363 So. 2d 1235 (La. Ct. App. 4th Cir. 1978).  
Neb.—*City of Omaha v. Matthews*, 197 Neb. 323, 248 N.W.2d 761 (1977).  
N.Y.—*Heath v. Diamond*, 82 Misc. 2d 217, 368 N.Y.S.2d 440 (Sup. 1975).  
**Liquor permits**  
Liquor permits were not contracts and created no vested rights but rather were merely temporary permits subject to revocation by the power authorizing their existence, and therefore state employees' alleged conduct in interfering with or denying a company the opportunity to market its alcohol-infused gelatin product, by delaying approval of a liquor license, did not deprive the company of constitutionally protected right.  
U.S.—*BPNC, Inc. v. Taft*, 147 Fed. Appx. 525, 2005 FED App. 0712N (6th Cir. 2005).  
**No vested right in having driver's license**  
N.Y.—*Scism v. Fiala*, 122 A.D.3d 1197, 997 N.Y.S.2d 798 (3d Dep't 2014).  
**Oil and gas company had no vested right in grant of permit to drill well**  
Tex.—*Shelby Operating Co. v. City of Waskom*, 964 S.W.2d 75 (Tex. App. Texarkana 1997).  
**Low-income housing developer had no vested right to building permit**  
Tex.—*Mont Belvieu Square, Ltd. v. City of Mont Belvieu, Tex.*, 27 F. Supp. 2d 935 (S.D. Tex. 1998).  
**Outdoor advertising company had no vested right in sign permit**  
U.S.—*Coral Springs Street Systems, Inc. v. City of Sunrise*, 371 F.3d 1320 (11th Cir. 2004) (applying Florida law).  
As to the definition and nature of licenses, generally, see C.J.S., *Licenses* §§ 1, 3.  
As to the eligibility for liquor licenses, see C.J.S., *Intoxicating Liquors* §§ 166 to 175.

- 2 Okla.—*Miller v. Gonzales*, 2010 OK CIV APP 56, 239 P.3d 163, 260 Ed. Law Rep. 427 (Div. 2 2010).
- 3 Cal.—*Los Alamitos Gen. Hosp., Inc. v. Lackner*, 86 Cal. App. 3d 417, 149 Cal. Rptr. 98 (2d Dist. 1978).
- Ga.—*Jackson v. Three Aces Co., Inc.*, 249 Ga. 395, 291 S.E.2d 522 (1982).
- N.D.—*A & H Services, Inc. v. City of Wahpeton*, 514 N.W.2d 855 (N.D. 1994).
- 4 D.C.—*Krueger v. Morton*, 539 F.2d 235 (D.C. Cir. 1976).
- La.—*Acy v. Allen Parish Police Jury*, 520 So. 2d 866 (La. Ct. App. 3d Cir. 1987).
- 5 Ga.—*Fulton County v. Action Outdoor Advertising, JV*, 289 Ga. 347, 711 S.E.2d 682 (2011).
- 6 Fla.—*Spiva v. Fernandez*, 303 So. 2d 363 (Fla. 3d DCA 1974).
- 7 N.Y.—*GRA V, LLC v. Srinivasan*, 55 A.D.3d 58, 862 N.Y.S.2d 358 (1st Dep't 2008), *rev'd on other grounds*, 12 N.Y.3d 863, 881 N.Y.S.2d 655, 909 N.E.2d 577 (2009).
- 8 Idaho—*Matter of Hidden Springs Trout Ranch, Inc.*, 102 Idaho 623, 636 P.2d 745 (1981).
- Mich.—*Midwest Teen Centers, Inc. v. City of Roseville*, 36 Mich. App. 627, 193 N.W.2d 906 (1971).
- Neb.—*Alcoholic Resocialization Conditioning Help, Inc. v. State*, 206 Neb. 788, 295 N.W.2d 281 (1980).
- Tenn.—*Brown-Forman Distillers Corp. v. Olsen*, 676 S.W.2d 567 (Tenn. Ct. App. 1984).
- Tex.—*Texas State Bd. of Barber Examiners v. Beaumont Barber College, Inc.*, 454 S.W.2d 729 (Tex. 1970).
- 9 U.S.—*U.S. v. Coleman Capital Corp.*, 295 F. Supp. 1016 (N.D. Ill. 1969).
- 10 Cal.—*Seering v. Department of Social Services*, 194 Cal. App. 3d 298, 239 Cal. Rptr. 422 (1st Dist. 1987).
- Pa.—*Menoyo v. Bureau of Professional and Occupational Affairs, State Bd. of Medicine*, 157 Pa. Commw. 292, 629 A.2d 295 (1993).
- Fraudulent misrepresentation**
- La.—*Sciortino v. Louisiana State Bd. of Cosmetology*, 194 So. 2d 409 (La. Ct. App. 4th Cir. 1967).
- 11 U.S.—*Santa Barbara Patients' Collective Health Co-op. v. City of Santa Barbara*, 911 F. Supp. 2d 884 (C.D. Cal. 2012) (under California law).
- Iowa—*B. & H. Investments, Inc. v. City of Coralville*, 209 N.W.2d 115 (Iowa 1973).
- 12 N.Y.—*Heath v. Diamond*, 82 Misc. 2d 217, 368 N.Y.S.2d 440 (Sup 1975).
- Refusal to submit to chemical test**
- Colo.—*Nix v. Tice*, 44 Colo. App. 42, 607 P.2d 399 (App. 1980).
- 13 U.S.—*Safeway Inc. v. City and County of San Francisco*, 797 F. Supp. 2d 964 (N.D. Cal. 2011).
- 14 N.C.—*Mission Hospitals, Inc. v. North Carolina Dept. of Health and Human Services, Div. of Health Service Regulation*, 205 N.C. App. 35, 696 S.E.2d 163 (2010).
- 15 N.C.—*Mission Hospitals, Inc. v. North Carolina Dept. of Health and Human Services, Div. of Health Service Regulation*, 205 N.C. App. 35, 696 S.E.2d 163 (2010).
- 16 Ga.—*Fulton County v. Action Outdoor Advertising, JV*, 289 Ga. 347, 711 S.E.2d 682 (2011).
- 17 U.S.—*KH Outdoor, L.L.C. v. Clay County, Fla.*, 410 F. Supp. 2d 1160 (M.D. Fla. 2006), *aff'd on other grounds*, 482 F.3d 1299 (11th Cir. 2007) (under Florida law).

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## 16A C.J.S. Constitutional Law § 490

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### Constitutional Law

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### B. Particular Rights

## § 490. Licenses and permits as vested—Licenses to engage in professions or trades

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2641

**Generally, there is no vested right to engage, free from statutory regulation, in the practice of various professions.**

Statutes and ordinances enacted within the scope of the police power for the regulation of professions, trades, and businesses do not constitute an infringement of vested rights<sup>1</sup> even though a grant or license of authority to engage in the profession, trade, or business has been given by the State or municipality.<sup>2</sup> No one who possesses a professional license has the right or ability to presume the license is vested; rather, a professional license remains subject to the laws and regulations which authorized its issuance in the first place, which is the antithesis of a vested right, and those laws and regulations may impose criteria for eligibility, both initially or following licensure; may require annual or other renewals; and may impose conditions on a license's continued viability tied to standards of conduct.<sup>3</sup> Accordingly, there is no vested right to engage, free from statutory regulation, in the practice of various professions, such as the practice of accountancy,<sup>4</sup> law,<sup>5</sup> medicine or dentistry,<sup>6</sup> optometry,<sup>7</sup> or psychology.<sup>8</sup> Furthermore, a person does not acquire a vested right to engage in the business of pharmacy,<sup>9</sup> or insurance,<sup>10</sup> or to operate an automobile drivers' school.<sup>11</sup>

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Footnotes

- 1 § 482.
- 2 U.S.—*Comtronics, Inc. v. Puerto Rico Telephone Co.*, 409 F. Supp. 800 (D.P.R. 1975), judgment aff'd, 553 F.2d 701 (1st Cir. 1977).  
Cal.—*Landau v. Superior Court*, 97 Cal. Rptr. 2d 657, 2 P.3d 1198 (Cal. 2000).  
Mich.—*Nolan v. Michigan Dept. of Licensing & Regulation*, 151 Mich. App. 641, 391 N.W.2d 424 (1986).  
**No substantive vested right to continue to pursue occupation**  
An individual, having obtained the license required to engage in a particular profession or vocation, has a fundamental vested right to continue in that activity, and a licensee, having obtained such a fundamental vested right, is entitled to certain procedural protections greater than those accorded an applicant, but a licensee does not possess a substantive vested right to continue to pursue his or her occupation.  
Cal.—*Hughes v. Board of Architectural Examiners*, 17 Cal. 4th 763, 72 Cal. Rptr. 2d 624, 952 P.2d 641 (1998).  
**Television broadcasters**  
CATV operators have no vested right to transmit a maximum number of signals to an unlimited number of subscribers if local broadcasting is jeopardized.  
D.C.—*Pikes Peak Broadcasting Co. v. F.C.C.*, 422 F.2d 671 (D.C. Cir. 1969).- 3 Mo.—*Missouri Real Estate Com'n v. Rayford*, 307 S.W.3d 686 (Mo. Ct. App. W.D. 2010).
- 4 Cal.—*Murrill v. State Bd. of Accountancy of Dept. of Professional and Vocational Standards*, 97 Cal. App. 2d 709, 218 P.2d 569 (2d Dist. 1950).  
Fla.—*Mercer v. Hemmings*, 194 So. 2d 579 (Fla. 1966).- 5 U.S.—*Ippolito v. State of Fla.*, 824 F. Supp. 1562 (M.D. Fla. 1993).
- 6 Iowa—*Clark v. District Court, In and For Pottawattamie County*, 255 Iowa 1005, 125 N.W.2d 264 (1963).  
Md.—*Aitchison v. State*, 204 Md. 538, 105 A.2d 495 (1954).  
Va.—*Last v. Virginia State Bd. of Medicine*, 14 Va. App. 906, 421 S.E.2d 201 (1992).  
**Acupuncture**  
U.S.—*Mitchell v. Clayton*, 995 F.2d 772 (7th Cir. 1993) (applying Illinois law).  
**Physical therapist assistant**  
Mo.—*State Bd. of Registration for Healing Arts v. Boston*, 72 S.W.3d 260 (Mo. Ct. App. W.D. 2002).  
**Appointment to hospital**  
N.Y.—*Shiffman v. Manhattan Eye, Ear and Throat Hospital*, 35 A.D.2d 709, 314 N.Y.S.2d 823 (1st Dep't 1970).- 7 Cal.—*Laisne v. State Bd. of Optometry*, 19 Cal. 2d 831, 123 P.2d 457 (1942).  
Ind.—*Bennett v. Indiana State Board of Registration and Examination in Optometry*, 211 Ind. 678, 7 N.E.2d 977 (1937).
- 8 Okla.—*Whittle v. State Bd. of Examiners of Psychologists*, 1971 OK 37, 483 P.2d 328 (Okla. 1971).  
Pa.—*Oliver v. Com., Dept. of State, Pennsylvania Bd. of Psychologist Examiners*, 45 Pa. Commw. 195, 404 A.2d 1386 (1979).
- 9 Cal.—*Rosenblatt v. California State Bd. of Pharmacy, Dept. of Professional and Vocational Standards*, 69 Cal. App. 2d 69, 158 P.2d 199 (3d Dist. 1945).  
La.—*State ex rel. Paquette v. Board of Pharmacy of Louisiana*, 192 La. 551, 188 So. 697 (1939).  
Mich.—*Beeman v. Michigan Bd. of Pharmacy*, 323 Mich. 390, 35 N.W.2d 354 (1949).
- 10 Cal.—*In re Carlson*, 87 Cal. App. 584, 262 P. 792 (1st Dist. 1927).
- 11 N.Y.—*Fochi v. Splain*, 36 N.Y.S.2d 774 (Sup 1942).

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## 16A C.J.S. Constitutional Law § 491

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### B. Particular Rights

## § 491. Zoning classifications and particular land uses as vested

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑2642

**While property owners do not acquire a constitutionally protected vested right in property uses once commenced or in zoning classifications once made, a nonconforming use is a vested right entitled to constitutional protection.**

While property owners do not acquire a constitutionally protected vested right in property uses once commenced or in zoning classifications once made,<sup>1</sup> a nonconforming use is a vested right entitled to constitutional protection.<sup>2</sup> A "nonconforming use" is a use of property that lawfully existed prior to the enactment of a zoning ordinance that continues after the ordinance's effective date even though it does not comply with the ordinance's restrictions.<sup>3</sup> In such situations, the landowner has a vested right in the use of the property before the use became nonconforming, and because the right is vested, the government cannot terminate it without implicating the Due Process or Takings Clauses of the Fifth Amendment of the Federal Constitution, applicable to the states through the Fourteenth Amendment.<sup>4</sup> There are limits that the courts have applied to the rule, however, including the admonition that the existence of a vested right does not absolutely preclude a governmental entity from amending its zoning ordinances since public entities may impair vested rights where necessary to protect the health and safety of the public.<sup>5</sup>

A vested right to an existing land-use benefit can be acquired when, pursuant to a legally issued permit, a landowner demonstrates a commitment to the purpose for which the permit was granted by effecting substantial changes and incurring substantial

expenses to further development.<sup>6</sup> However, in order to gain such a vested right to an existing land-use benefit, the landowner's actions relying on a valid permit must be so substantial that the municipal action results in a serious loss rendering the improvements essentially valueless.<sup>7</sup>

A mere expectation, desire, intention, or preliminary approval to develop a property in a particular way is not sufficient to create a vested right.<sup>8</sup> For purposes of enforcing a land use ordinance, a landowner's use of his or her property is not a constitutionally protected vested right because it concerns only the way that the property is used, which is not an absolute right. Property owners do not have a constitutionally protected vested right to use real property in a certain way without any restriction.<sup>9</sup> To acquire a vested right, for example, a developer must have progressed significantly with the physical aspects of a project or made a binding commitment to develop the property.<sup>10</sup>

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#### Footnotes

- 1 Tex.—[Wild Rose Rescue Ranch v. City of Whitehouse](#), 373 S.W.3d 211 (Tex. App. Tyler 2012).
  - 2 Md.—[Trip Associates, Inc. v. Mayor and City Council of Baltimore](#), 392 Md. 563, 898 A.2d 449 (2006).
  - 3 Ind.—[City of New Haven v. Flying J., Inc.](#), 912 N.E.2d 420 (Ind. Ct. App. 2009).
  - 4 Ind.—[City of New Haven v. Flying J., Inc.](#), 912 N.E.2d 420 (Ind. Ct. App. 2009).
- Due process violation**
- A zoning ordinance which requires the discontinuance forthwith of a nonconforming use existing when the ordinance was adopted is a deprivation of property without due process of law unless the use is a public nuisance.
- U.S.—[Santa Barbara Patients' Collective Health Co-op. v. City of Santa Barbara](#), 911 F. Supp. 2d 884 (C.D. Cal. 2012) (under California law).
- Failure to establish vested right**
- An adult business failed to establish a vested right to continue operating under a new zoning ordinance as a lawful nonconforming use, as when the business began operating, it violated the zoning ordinances as then written, and consequently it could not have relied on existing law because it began operating plainly in contravention of that law, and there was no evidence of bad faith or arbitrary behavior by the city.
- U.S.—[Daytona Grand, Inc. v. City of Daytona Beach, Fla.](#), 490 F.3d 860 (11th Cir. 2007) (under Florida law).
- 5 U.S.—[Santa Barbara Patients' Collective Health Co-op. v. City of Santa Barbara](#), 911 F. Supp. 2d 884 (C.D. Cal. 2012) (under California law).
- 6 U.S.—[Cine SK8, Inc. v. Town of Henrietta](#), 507 F.3d 778 (2d Cir. 2007) (under New York law).
- As to licenses and permits, generally, see § 489.
- 7 U.S.—[Cine SK8, Inc. v. Town of Henrietta](#), 507 F.3d 778 (2d Cir. 2007) (under New York law).
- 8 Minn.—[Concept Properties, LLP v. City of Minnetrista](#), 694 N.W.2d 804 (Minn. Ct. App. 2005).
- 9 Tex.—[City of La Marque v. Braskey](#), 216 S.W.3d 861 (Tex. App. Houston 1st Dist. 2007).
- 10 Minn.—[Concept Properties, LLP v. City of Minnetrista](#), 694 N.W.2d 804 (Minn. Ct. App. 2005).

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## 16A C.J.S. Constitutional Law § 492

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### B. Particular Rights

## § 492. Vested rights of states, municipalities, and their citizens; public funds

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 2630, 2632, 2646

**A state has no vested rights which are immune from legislative control; hence, a retroactive law operating on property belonging to the State is not unconstitutional.**

A state has no vested rights which are immune from its legislative control.<sup>1</sup> As a general rule, therefore, a retroactive law passed by a state legislature operating on property belonging to the State is not unconstitutional as long as private rights are not infringed.<sup>2</sup>

A municipality has no vested right as against the exercise of the sovereign power of the State.<sup>3</sup> Thus, municipalities obtain no vested rights under legislative acts relating to them.<sup>4</sup> For example, the political rights and privileges of a county are outside the protection of constitutional inhibitions against laws impairing vested rights.<sup>5</sup>

A municipality<sup>6</sup> and the persons residing therein have no vested rights in powers or franchises conferred on it, or on its officers, for civil, political, or administrative purposes.<sup>7</sup> Furthermore, unless restrained by the state constitution, they may be changed or altered by the legislature<sup>8</sup> or taken away.<sup>9</sup>



***Local districts.***

Generally, a school, road, or similar type of district created within a state has no rights except as are conferred on it by the legislature, and these rights are not vested so as to preclude a subsequent modification or withdrawal by the legislature.<sup>10</sup> Thus, with respect to constitutional requirements, there are no vested inviolable rights in the existence of a school district,<sup>11</sup> or a sewer district,<sup>12</sup> or in the territory or boundaries of the government.<sup>13</sup> A citizen does not have a vested property right in the public schools of the state<sup>14</sup> since individuals do not have any vested rights in the manner or method of the development of the educational system of the state.<sup>15</sup>

***Disposition of public funds.***

A governmental subdivision of the State<sup>16</sup> or an agency thereof has no vested right to a share in public funds.<sup>17</sup> Thus, a power granted to a city to collect and retain license fees is not a vested property right, and the power may be withdrawn at the discretion of the legislature.<sup>18</sup> On the other hand, school districts and cities having charge of their schools as trustees for their inhabitants have a vested right in the public school funds collected,<sup>19</sup> and a highway district acquires a vested right in a contract of special deposit made in its behalf by its treasurer.<sup>20</sup>

An individual taxpayer has no vested interest in public funds collected by general taxation.<sup>21</sup> On the other hand, a taxpayer has vested rights in the funds in an improvement district which have been collected by a special levy for which a corresponding benefit is to be conferred<sup>22</sup> although the State may require the funds to be used for a certain improvement within the district.<sup>23</sup> Taxpayers, as developers, have a vested contract right in city council's exercise of its discretion in considering whether to make annual appropriations to developers under economic incentive agreements.<sup>24</sup> The legislature may not disturb the vested rights of holders of warrants for which the proceeds of particular taxes have been pledged or the vested rights of holders of bonds of a state agency in a sinking fund or other valid commitment for their payment.<sup>25</sup> The repeal of a statute authorizing a political subdivision to issue notes in anticipation of funds to be collected is ineffectual to impair vested rights in notes already issued.<sup>26</sup> Furthermore, banks have no vested right to be selected as a depository bank for state moneys.<sup>27</sup>

***Relief or public assistance.***

Generally, relief or public assistance is not a vested property right held by any person or group of persons,<sup>28</sup> and any analogy drawn between social welfare and property cannot be stretched to impose a constitutional limitation on the power of the legislature to make substantial changes in the law of entitlement to public benefits.<sup>29</sup> However, a formula for determining welfare grants may not be retroactively applied so as to deprive a recipient of benefits already accrued<sup>30</sup> since there is a vested right to receive all the aid to which a person is entitled under the public assistance laws.<sup>31</sup>

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Footnotes

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Ark.—*Skelton v. B. C. Land Co., Inc.*, 260 Ark. 122, 539 S.W.2d 411 (1976).

Ind.—*Department of Public Welfare of Allen County v. Potthoff*, 220 Ind. 574, 44 N.E.2d 494 (1942).

Mont.—*Carkulis v. Doe*, 164 Mont. 315, 521 P.2d 1305 (1974).

**Legislature may waive or impair vested rights**

The legislature may waive or impair the vested or substantive rights of the Department of Social Services as an agency of the State.

Mo.—*American Family Mut. Ins. Co. v. Fehling*, 970 S.W.2d 844 (Mo. Ct. App. W.D. 1998).

Ind.—*State ex rel. Mass. Transp. Authority of Greater Indianapolis v. Indiana Revenue Bd.*, 144 Ind. App. 63, 253 N.E.2d 725 (1969).

Alaska—*Fairbanks North Star Borough v. State*, 753 P.2d 1158 (Alaska 1988).

Tex.—*Deacon v. City of Eules*, 405 S.W.2d 59 (Tex. 1966).

Wis.—*Madison Metropolitan Sewerage Dist. v. Committee on Water Pollution*, 260 Wis. 229, 50 N.W.2d 424 (1951).

Wis.—*State ex rel. Prahlow v. City of Milwaukee*, 251 Wis. 521, 30 N.W.2d 260 (1947).

Tex.—*Hunt County v. Rains County*, 7 S.W.2d 648 (Tex. Civ. App. Texarkana 1925).

Fla.—*State v. Dade County*, 142 So. 2d 79 (Fla. 1962).

La.—*Orleans Parish School Bd. v. City of New Orleans*, 56 So. 2d 280 (La. Ct. App., Orleans 1952).

Tex.—*Southwestern Bell Tel. Co. v. City of Kountze*, 543 S.W.2d 871 (Tex. Civ. App. Beaumont 1976).

Wis.—*Madison Metropolitan Sewerage Dist. v. Committee on Water Pollution*, 260 Wis. 229, 50 N.W.2d 424 (1951).

#### **Annexation of unincorporated area**

A city had no vested right to complete the annexation of an unincorporated area under the law as it existed prior to the enactment of a statutory amendment which gave priority to incorporation proceedings over a city's attempts to annex the same area; thus, the amendment was not unconstitutional retrospective legislation.

Colo.—*City of Greenwood Village v. Petitioners for Proposed City of Centennial*, 3 P.3d 427 (Colo. 2000).

Pa.—*Henderson v. Delaware River Joint Toll Bridge Commission*, 362 Pa. 475, 66 A.2d 843 (1949).

Me.—*Baxter v. Waterville Sewerage Dist.*, 146 Me. 211, 79 A.2d 585 (1951).

Mass.—*Mayor of Gloucester v. City Clerk of Gloucester*, 327 Mass. 460, 99 N.E.2d 452 (1951).

Tex.—*Southwestern Bell Tel. Co. v. City of Kountze*, 543 S.W.2d 871 (Tex. Civ. App. Beaumont 1976).

Mass.—*Mayor of Gloucester v. City Clerk of Gloucester*, 327 Mass. 460, 99 N.E.2d 452 (1951).

N.Y.—*City of Rochester v. Public Service Commission*, 192 Misc. 33, 83 N.Y.S.2d 436 (Sup 1948), order aff'd, 275 A.D. 172, 89 N.Y.S.2d 545 (3d Dep't 1949), order aff'd, 301 N.Y. 801, 96 N.E.2d 192 (1950).

Wis.—*State ex rel. Martin v. City of Juneau*, 238 Wis. 564, 300 N.W. 187 (1941).

Kan.—*Board of Educ. of Unified School Dist. No. 443, Ford County v. Kansas State Bd. of Educ.*, 266 Kan. 75, 966 P.2d 68, 130 Ed. Law Rep. 308 (1998).

N.Y.—*Black River Regulating Dist. v. Adirondack League Club*, 307 N.Y. 475, 121 N.E.2d 428 (1954).

Or.—*State ex rel. Allen v. Martin*, 255 Or. 401, 465 P.2d 228 (1970).

#### **No vested right in exemption from sanitary district**

Wis.—*State ex rel. Vanderbloemen v. Town of West Bend Bd. of Sup'rs*, 188 Wis. 2d 458, 525 N.W.2d 133 (Ct. App. 1994).

#### **Water district**

Even assuming that the federal government, by entering into a water service agreement with a local water district, obligated itself to supply, without excuse, 900,000 acre-feet of water, the water district did not acquire any vested property right with which the government could not interfere by subsequent legislation where the contract contained no language in which Congress clearly and absolutely surrendered its right to adjust the amount of water supplied under the contract to meet environmental or other needs.

U.S.—*Barcellos and Wolfsen, Inc. v. Westlands Water Dist.*, 849 F. Supp. 717 (E.D. Cal. 1993), aff'd, 50 F.3d 677, 26 U.C.C. Rep. Serv. 2d 1 (9th Cir. 1995).

Kan.—*Williams v. Board of Ed. of City of Wichita*, 198 Kan. 115, 422 P.2d 874 (1967).

S.D.—*Warner Independent School Dist. No. 230 of Brown County v. County Bd. of Ed. of Brown County*, 85 S.D. 161, 179 N.W.2d 6 (1970).

Mo.—*State ex rel. Jones v. Nolte*, 350 Mo. 271, 165 S.W.2d 632 (1942).

Neb.—*Clark v. Sweet*, 187 Neb. 232, 188 N.W.2d 889 (1971).

S.D.—*Warner Independent School Dist. No. 230 of Brown County v. County Bd. of Ed. of Brown County*, 85 S.D. 161, 179 N.W.2d 6 (1970).

Va.—*Flory v. Smith*, 145 Va. 164, 134 S.E. 360, 48 A.L.R. 654 (1926).

- 15 Mich.—*Bridgehampton School Dist. No. 2, Fractional, of Carsonville v. Superintendent of Public Instruction*, 323 Mich. 615, 36 N.W.2d 166 (1949).
- 16 Conn.—*State v. County Com'rs of Fairfield County*, 99 Conn. 378, 121 A. 800 (1923).  
Iowa—*Herrick v. Cherokee County*, 199 Iowa 510, 202 N.W. 252 (1925).  
Ohio—*City of Cleveland v. Zangerle*, 127 Ohio St. 91, 186 N.E. 805 (1933).
- 17 Cal.—*City of San Marcos v. California Highway Com.*, 60 Cal. App. 3d 383, 131 Cal. Rptr. 804 (1st Dist. 1976).

#### **Controlling vote**

A city's former controlling vote on an alternative apportionment scheme, for apportionment of a county's undivided local government fund and undivided local government revenue assistance fund among the county's political subdivisions, was not a constitutionally protected vested right and instead was a mere privilege, which the legislature could modify by statutory amendments allowing an alternative apportionment scheme to be adopted by political subdivisions in the county without approval of the largest city in the county.

Ohio—*E. Liverpool v. Columbiana Cty. Budget Comm.*, 114 Ohio St. 3d 133, 2007-Ohio-3759, 870 N.E.2d 705 (2007).

#### **Budgeted appropriations**

Appropriations by the legislature to the board of regents did not become vested in the board when made so that they could not thereafter be reduced by the legislature.

R.I.—*In re Opinion to the Senate*, 108 R.I. 302, 275 A.2d 256 (1971).

18 Colo.—*City and County of Denver v. People*, 103 Colo. 565, 88 P.2d 89 (1939).

19 Tex.—*Love v. City of Dallas*, 120 Tex. 351, 40 S.W.2d 20 (1931).

20 Idaho—*In re Fidelity State Bank of Orofino*, 35 Idaho 797, 209 P. 449, 31 A.L.R. 781 (1922).

21 Ark.—*McCrary v. Schenebeck*, 191 Ark. 698, 87 S.W.2d 572 (1935), *aff'd*, 298 U.S. 36, 56 S. Ct. 672, 80 L. Ed. 1031 (1936).

#### **Native Hawaiians**

Native Hawaiians had no vested right either to receive money themselves or to have a particular amount of money appropriated to the Office of Hawaiian Affairs.

Haw.—*Hoohuli v. Ariyoshi*, 631 F. Supp. 1153 (D. Haw. 1986).

22 Ark.—*Bauer v. North Arkansas Highway Imp. Dist. No. 1*, 168 Ark. 220, 270 S.W. 533, 38 A.L.R. 1507 (1925).

23 Ark.—*McAdams v. Henley*, 169 Ark. 97, 273 S.W. 355, 41 A.L.R. 629 (1925).

24 Colo.—*City of Golden v. Parker*, 138 P.3d 285 (Colo. 2006).

25 Ala.—*Opinion of the Justices*, 249 Ala. 180, 30 So. 2d 715 (1947).

26 Ohio—*State ex rel. City of Youngstown v. Jones*, 136 Ohio St. 130, 16 Ohio Op. 73, 24 N.E.2d 442 (1939).

27 Okla.—*Winters v. State Depository Bd.*, 1969 OK 178, 460 P.2d 882 (Okla. 1969).

28 U.S.—*Irizarry v. Weinberger*, 381 F. Supp. 1146 (S.D. N.Y. 1974).

Ariz.—*Allen v. Graham*, 8 Ariz. App. 336, 446 P.2d 240 (1968).

N.Y.—*Torres v. Wyman*, 60 Misc. 2d 771, 303 N.Y.S.2d 543 (Sup 1969).

#### **Public housing**

Tenants in public housing projects have no vested right in their tenancy.

U.S.—*McDougal v. Tamsberg*, 308 F. Supp. 1212 (D.S.C. 1970).

#### **Aid to dependent children**

The recipient of public assistance under a grant of aid to dependent children had no fixed right in a special grant system of payment for clothing for her children, household equipment and furniture, nor such vested interest that a simplified payments system of cyclical grants instituted to replace the system of special grants deprived her of benefits to which she was entitled.

N.Y.—*Hart v. Wyman*, 36 A.D.2d 695, 318 N.Y.S.2d 953 (1st Dep't 1971), *order aff'd*, 29 N.Y.2d 834, 327 N.Y.S.2d 850, 277 N.E.2d 784 (1971).

29 D.C.—*de Rodulfa v. U.S.*, 461 F.2d 1240, 18 A.L.R. Fed. 890 (D.C. Cir. 1972).

30 N.Y.—*Torres v. Wyman*, 60 Misc. 2d 771, 303 N.Y.S.2d 543 (Sup 1969).

#### **Grant levels**

A consent decree between welfare recipients and a county setting general assistance grant levels did not give recipients a "vested contractual right" to continue to have their grant level set according to the formula specified in the decree in the event that the underlying statutory obligation to provide for the "minimum subsistence needs" of general assistance recipients was changed; thus, a statutory amendment under which the county could calculate its grant levels based on a formula contained in the amendment rather than the formula contained in the consent decree did not violate the contract clauses of the state and federal constitutions.

Cal.—[Welfare Rights v. Frank](#), 25 Cal. App. 4th 415, 30 Cal. Rptr. 2d 716 (1st Dist. 1994).

Cal.—[Canfield v. Prod.](#), 67 Cal. App. 3d 722, 137 Cal. Rptr. 27 (1st Dist. 1977).

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## 16A C.J.S. Constitutional Law § 493

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### B. Particular Rights

## § 493. Vested rights of state or municipal creditors

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑2646

**Rights of claimants and creditors against a municipality or other subdivision of the State which have become vested may not be impaired.**

Where under a special law a state or municipality has collected,<sup>1</sup> or has been authorized to collect, taxes to pay creditors whose rights have become fixed, such creditors have a vested right in the funds which cannot be affected by legislative act.<sup>2</sup> Creditors have no vested right, however, in or to a levy of taxes for the payment of their claims until the taxes have been voted.<sup>3</sup> Furthermore, where the legislature repeals an appropriation, thus occasioning a breach of contracts made on the faith thereof, the contractors must resort to other remedies and cannot insist that the appropriation remains available simply because of the contract.<sup>4</sup>

Creditors have no vested right that the territorial boundaries of a city or village remain constant so long as a substantial part of its original territory is unimpaired.<sup>5</sup> Holders of warrants have no vested right to payment out of a fund appropriated for other purposes,<sup>6</sup> nor have they vested rights in future funds to be raised by the issuance of bonds which are authorized by statute after the claims have arisen.<sup>7</sup>

***Bondholders.***

Holders of bonds issued by a municipality or other subdivision of the State have a vested property interest<sup>8</sup> and a vested right in their security, including taxes and assessments which are raised for the payment of the bonds.<sup>9</sup> As long as the security remains unimpaired, however, holders of municipal bonds have no vested right to have the personnel of administrative boards remain unchanged,<sup>10</sup> or to have the territorial boundaries of the city remain unaltered,<sup>11</sup> and holders of school bonds have no vested rights which are interfered with where new districts are created.<sup>12</sup>

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**Footnotes**

- 1 Ohio—*State ex rel. City of Youngstown v. Jones*, 136 Ohio St. 130, 16 Ohio Op. 73, 24 N.E.2d 442 (1939).
- 2 Ala.—*Opinion of the Justices*, 249 Ala. 525, 32 So. 2d 303 (1947).
- 3 Ark.—*Pledger v. Cutrell*, 189 Ark. 562, 75 S.W.2d 76 (1934).
- 4 Wis.—*State v. Donald*, 163 Wis. 145, 157 N.W. 782 (1916).
- 5 Neb.—*Hustead v. Village of Phillips*, 131 Neb. 303, 267 N.W. 919 (1936).
- 6 Cal.—*Reclamation Board of California v. Riley*, 208 Cal. 661, 284 P. 668 (1930).
- 7 Cal.—*Sacramento and San Joaquin Drainage Dist. v. Johnson*, 192 Cal. 211, 219 P. 442 (1923).
- 8 Ill.—*Scribner v. Village of Downers Grove*, 372 Ill. 614, 25 N.E.2d 54 (1939).
- 9 Ark.—*Broadway-Main Street Bridge Dist. v. Mortgage Loan & Ins. Agency*, 195 Ark. 390, 112 S.W.2d 648 (1938).  
     Fla.—*City of Winter Haven v. State ex rel. Baynes*, 114 Fla. 527, 154 So. 879 (1934).  
     Okla.—*Application of Oklahoma Turnpike Authority*, 1966 OK 139, 416 P.2d 860 (Okla. 1966).
- 10 La.—*State ex rel. Porterie v. Walmsley*, 183 La. 139, 162 So. 826 (1935).
- 11 Neb.—*Hustead v. Village of Phillips*, 131 Neb. 303, 267 N.W. 919 (1936).
- 12 Del.—*In re School Code of 1919*, 30 Del. 406, 7 Boyce 406, 108 A. 39 (1919).

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### B. Particular Rights

## § 494. Public office or employment as vested

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑2644

**As a general rule, no one has a vested right to a public office or employment.**

In the absence of a statutory grant of the right,<sup>1</sup> and subject to the rule that constitutional offices may not be disturbed by the legislature except to the extent, and in the manner, prescribed by the constitution,<sup>2</sup> it is generally found that no one has a vested right to a public office or employment with the government or any of its agencies and that the office or position may be abolished, the incumbent removed, his or her term reduced, or his or her duties suspended, restricted, or enlarged or otherwise affected without impairing constitutional rights.<sup>3</sup> This is especially so where the statute or ordinance under which the person is employed or appointed provides that the appointment or employment will be at will.<sup>4</sup> The privileges of one holding office are, however, within certain limitations, entitled to the protection of the law.<sup>5</sup>

Under some authority, an employee under a civil service statute or ordinance,<sup>6</sup> or under a collective bargaining agreement, has been found to have a vested right in the position he or she holds.<sup>7</sup> According to other authority, however, preference rights or civil service rights of public employees granted by law are not vested, and such rights and the remedies for the enforcement thereof may be abolished or modified.<sup>8</sup> Accordingly, it has been found that civil service statutes and regulations do not provide

vested rights to promotions<sup>9</sup> and that where promotions are made, there is no vested right in the particular method or formula of awarding them.<sup>10</sup> An unconfirmed appointee to an office to which confirmation of the appointment is required by law has no constitutional or vested right to such office.<sup>11</sup> Furthermore, a probationary<sup>12</sup> or provisional appointee to a position has no vested right therein;<sup>13</sup> such appointee acquires no vested right to a permanent appointment to the position by virtue of temporary or provisional service.<sup>14</sup>

### ***Mandatory retirement.***

Generally, there is no vested right which prohibits the imposition of a mandatory retirement age upon a public employee.<sup>15</sup> Moreover, an employee has no vested right in the particular mandatory retirement age in effect at the time he or she is hired<sup>16</sup> which precludes the legislature from lowering that age.<sup>17</sup>

### ***Teachers.***

A public school teacher who has complied with all the requirements of a statute which bestows a permanent tenure has been found to have a vested right to such tenure.<sup>18</sup> Tenure conferred by statute on a public school teacher does not carry with it a vested right to a particular salary.<sup>19</sup> The nature of this vested right has been qualified, however, by a holding that it is a vested right to continue in employment "under the law as it now exists" and that it is not beyond the power of the legislature to terminate.<sup>20</sup> Furthermore, statutes altering permanent teacher tenure, as by providing for the retirement of teachers reaching a specified age, have been found valid and applicable to tenure rights already acquired, at least where the legislature has reserved to itself the power to make amendments to the permanent tenure laws.<sup>21</sup>

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### Footnotes

- 1 Ariz.—*Donaldson v. Sisk*, 57 Ariz. 318, 113 P.2d 860 (1941).  
Cal.—*Boutwell v. State Bd. of Equalization*, 94 Cal. App. 2d 945, 212 P.2d 20 (1st Dist. 1949).  
N.Y.—*Lapolla v. Board of Ed. of City of New York*, 172 Misc. 364, 15 N.Y.S.2d 149 (Sup 1939), judgment aff'd, 258 A.D. 781, 15 N.Y.S.2d 721 (1st Dep't 1939), judgment aff'd, 282 N.Y. 674, 26 N.E.2d 807 (1940).
- 2 Ga.—*Houlihan v. Saussy*, 206 Ga. 1, 55 S.E.2d 557 (1949).  
Ky.—*Black v. Sutton*, 301 Ky. 247, 191 S.W.2d 407 (1945).  
N.Y.—*O'Connor v. Emerson*, 196 A.D. 807, 188 N.Y.S. 236 (4th Dep't 1921), aff'd, 232 N.Y. 561, 134 N.E. 572 (1921).
- 3 Ariz.—*Proksa v. Arizona State Schools for the Deaf and the Blind*, 205 Ariz. 627, 74 P.3d 939, 179 Ed. Law Rep. 911 (2003).  
Ga.—*DeClue v. City of Clayton*, 246 Ga. App. 487, 540 S.E.2d 675 (2000).  
Pa.—*Lyons v. City of Pittsburgh*, 137 Pa. Commw. 330, 586 A.2d 469 (1991).  
Wash.—*Sneed v. Barna*, 80 Wash. App. 843, 912 P.2d 1035 (Div. 2 1996).  
**Municipal judges**  
A municipal judge did not have a vested right or property interest in his position where a city ordinance provided that the term of a municipal judge will be by appointment of the city council by a majority vote of the governing party.  
Tex.—*Salmon v. Miller*, 951 F. Supp. 103 (E.D. Tex. 1996).
- 4 D.C.—*Mazaleski v. Treusdell*, 562 F.2d 701 (D.C. Cir. 1977).  
Mo.—*Willens v. Personnel Bd. of Kansas City*, 277 S.W.2d 665 (Mo. Ct. App. 1955).  
**Fixed term or for cause employment**



The right to continued public employment may arise where there is a guaranty of employment for a fixed term or where the employment allows termination only for cause.

U.S.—[Moore v. Tri-City Hosp. Authority](#), 696 F. Supp. 1496 (N.D. Ga. 1988).

N.M.—[Reese v. Dempsey](#), 1944-NMSC-039, 48 N.M. 417, 152 P.2d 157 (1944).

W. Va.—[Hockman v. Tucker County Court](#), 138 W. Va. 132, 75 S.E.2d 82 (1953).

Cal.—[West v. City of Berkeley](#), 96 Cal. App. 3d 143, 157 Cal. Rptr. 764 (1st Dist. 1979).

Ky.—[Black v. Sutton](#), 301 Ky. 247, 191 S.W.2d 407 (1945).

#### **Prior service credit**

Municipal and county employees' rights to prior service credit are vested rights.

N.J.—[Taureck v. Jersey City](#), 149 N.J. Super. 503, 374 A.2d 70 (Law Div. 1977).

#### **Rank**

Employees holding ranks in civil service acquire vested property rights in ranks that they hold; these valuable rights include job security, seniority rights, and disability and sick benefits.

Colo.—[City and County of Denver v. District Court of Second Judicial Dist. In and For City and County of Denver](#), 196 Colo. 134, 582 P.2d 678 (1978).

Vt.—[In re Grievance of Muzzy](#), 141 Vt. 463, 449 A.2d 970 (1982).

Cal.—[Miller v. State of California](#), 18 Cal. 3d 808, 135 Cal. Rptr. 386, 557 P.2d 970 (1977).

Colo.—[Blake v. Department of Personnel](#), 876 P.2d 90 (Colo. App. 1994).

Ill.—[Sanders v. City of Springfield](#), 130 Ill. App. 3d 490, 85 Ill. Dec. 710, 474 N.E.2d 438 (4th Dist. 1985).

#### **No vested right in retaining status as classified civil service employees**

Ohio—[Lawrence v. Edwin Shaw Hosp.](#), 34 Ohio App. 3d 137, 517 N.E.2d 984 (10th Dist. Franklin County 1986).

#### **Veteran's preference rights are not vested rights**

Pa.—[Merrell v. Chartiers Valley School Dist.](#), 579 Pa. 97, 855 A.2d 713, 191 Ed. Law Rep. 402 (2004).

#### **Seniority rights not vested property rights**

U.S.—[Officers for Justice v. Civil Service Com'n of City and County of San Francisco](#), 473 F. Supp. 801 (N.D. Cal. 1979), judgment aff'd, 688 F.2d 615, 34 Fed. R. Serv. 2d 1586 (9th Cir. 1982).

#### **Act classifying jobs**

An act which merely classifies jobs in public employment and fixes salaries of state employees holding those jobs is not intended to create private contractual or vested rights to continued employment in those jobs at those salaries but merely declares the policy to be pursued until the legislature ordains otherwise.

Me.—[Hammond v. Temporary Compensation Review Bd.](#), 473 A.2d 1267 (Me. 1984).

U.S.—[Williams v. Ledbetter](#), 685 F. Supp. 247 (M.D. Ga. 1988) (applying Georgia law).

N.J.—[De Stefano v. Civil Service Commission of State of New Jersey](#), 130 N.J.L. 267, 32 A.2d 284 (N.J. Ct. Err. & App. 1943).

Mont.—[Stephens v. City of Billings](#), 148 Mont. 372, 422 P.2d 342 (1966).

#### **Promotional lists**

No one has any vested right in the maintenance of promotional lists, with respect to positions with the city, past the statutory minimum period.

La.—[Rodriguez v. City Civil Service Commission for New Orleans Parish](#), 337 So. 2d 308 (La. Ct. App. 4th Cir. 1976).

W. Va.—[Hockman v. Tucker County Court](#), 138 W. Va. 132, 75 S.E.2d 82 (1953).

Cal.—[Lubey v. City and County of San Francisco](#), 98 Cal. App. 3d 340, 159 Cal. Rptr. 440 (1st Dist. 1979).

Ind.—[Untch v. Chaddock](#), 520 N.E.2d 118 (Ind. Ct. App. 1988).

Tex.—[Smith v. City of Houston](#), 552 S.W.2d 945 (Tex. Civ. App. Houston 1st Dist. 1977).

Ill.—[Levin v. Civil Service Commission of Cook County](#), 52 Ill. 2d 516, 288 N.E.2d 97 (1972).

Kan.—[Sinclair v. Schroeder](#), 225 Kan. 3, 586 P.2d 683 (1978).

N.Y.—[Vaccaro v. Board of Ed. of City of New York](#), 54 Misc. 2d 206, 282 N.Y.S.2d 881 (N.Y. City Civ. Ct. 1967).

Ill.—[Levin v. Civil Service Commission of Cook County](#), 52 Ill. 2d 516, 288 N.E.2d 97 (1972).

N.Y.—[Vaccaro v. Board of Ed. of City of New York](#), 54 Misc. 2d 206, 282 N.Y.S.2d 881 (N.Y. City Civ. Ct. 1967).

U.S.—[Armstrong v. Howell](#), 371 F. Supp. 48 (D. Neb. 1974).

Cal.—[Townsend v. County of Los Angeles](#), 49 Cal. App. 3d 263, 122 Cal. Rptr. 500 (2d Dist. 1975).

- 17 Mass.—[McCarthy v. Sheriff of Suffolk County](#), 366 Mass. 779, 322 N.E.2d 758 (1975).
- 18 Cal.—[Turner v. Board of Trustees](#), 16 Cal. 3d 818, 129 Cal. Rptr. 443, 548 P.2d 1115 (1976).
- School assignment**
- A teacher has no vested constitutional right to be employed at the school of his or her choice.
- S.C.—[Stevenson v. Lower Marion County School Dist. No. Three](#), 285 S.C. 62, 327 S.E.2d 656, 23 Ed. Law Rep. 1101 (1985).
- As to the abrogation or modification of tenure rights of teachers, generally, see [C.J.S., Schools and School Districts § 357](#).
- As to rights incident to permanent tenure of a public school teacher, generally, see [C.J.S., Schools and School Districts § 353](#).
- 19 Cal.—[Kacsur v. Board of Trustees of South Whittier Elementary School Dist.](#), 18 Cal. 2d 586, 116 P.2d 593 (1941).
- 20 Cal.—[Adelt v. Richmond School Dist.](#), 250 Cal. App. 2d 149, 58 Cal. Rptr. 151 (1st Dist. 1967).
- 21 Cal.—[Taylor v. Board of Ed. of City of San Diego](#), 31 Cal. App. 2d 734, 89 P.2d 148 (4th Dist. 1939).

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## 16A C.J.S. Constitutional Law § 495

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### Constitutional Law

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### B. Particular Rights

## § 495. Public office or employment as vested—Compensation and related benefits

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑2645

**An officer or employee has a vested right in salary and fees which have been earned, but not in such as are to be earned in the future, including future salary increases.**

An officer or employee has a vested right in salary and fees which have been earned<sup>1</sup> but not in such salary as is to be earned in the future.<sup>2</sup> Additionally, public employees have no vested rights to particular levels of compensation, and salaries may be modified or reduced by the proper statutory authority.<sup>3</sup>

Thus, in essence, statutes governing wages, working conditions, and benefits of public employees do not create any vested rights<sup>4</sup> since the state legislature must be free to exercise its constitutional authority without concern that each time a public policy is expressed contractual rights may thereby be created.<sup>5</sup> Certain types of legislative acts, including those fixing salaries and compensation, give rise to the presumption that the law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature ordains otherwise.<sup>6</sup>

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Footnotes

- 1 Mich.—[Ramey v. State](#), 296 Mich. 449, 296 N.W. 323 (1941).  
N.J.—[Warren v. Hudson County](#), 23 N.J. Misc. 252, 43 A.2d 785 (C.P. 1945), judgment aff'd, 135 N.J.L. 91, 47 A.2d 348 (N.J. Sup. Ct. 1946), judgment aff'd, 135 N.J.L. 178, 50 A.2d 877 (N.J. Ct. Err. & App. 1947).  
Ohio—[Hull v. City of Cleveland](#), 79 Ohio App. 87, 34 Ohio Op. 476, 46 Ohio L. Abs. 467, 70 N.E.2d 137 (8th Dist. Cuyahoga County 1946).  
As to an officer's contractual right to compensation for services rendered, as not subject to impairment, see § 545.  
As to restrictions on changing the compensation of public officers and employees, generally, see [C.J.S., Officers and Public Employees](#) §§ 396 to 413.
- 2 U.S.—[Trabal v. U. S.](#), 224 Ct. Cl. 277, 624 F.2d 1035 (1980).  
Ariz.—[Bennett ex rel. Arizona State Personnel Commission v. Beard](#), 27 Ariz. App. 534, 556 P.2d 1137 (Div. 1 1976).  
Del.—[Grant v. Nellius](#), 377 A.2d 354 (Del. 1977).  
**Wages, working conditions, and benefits**  
Statutes governing wages, working conditions, and benefits of public employees do not create any vested rights in their continued existence.  
Ill.—[Gaiser v. Village of Skokie](#), 271 Ill. App. 3d 85, 207 Ill. Dec. 749, 648 N.E.2d 205 (1st Dist. 1995).  
**Sick-leave payments**  
(1) The right to accumulated sick leave with pay is not a vested one and consequently can be taken away.  
Cal.—[Newman v. City of Oakland Retirement Bd.](#), 80 Cal. App. 3d 450, 145 Cal. Rptr. 628 (1st Dist. 1978).  
(2) Sick-leave benefits, where authorized in terms of employment, are considered an integral part of a public employee's contemplated compensation and form part of the employment contract, and the right to receive such benefits vests at the time one becomes a governmental employee or continues in such employment.  
N.H.—[Gilman v. Cheshire County](#), 126 N.H. 445, 493 A.2d 485 (1985).
- 3 U.S.—[San Diego Police Officers' Ass'n v. San Diego City Employees' Retirement System](#), 568 F.3d 725 (9th Cir. 2009) (under California law).
- 4 Ill.—[Dopkeen v. Whitaker](#), 399 Ill. App. 3d 682, 339 Ill. Dec. 319, 926 N.E.2d 794 (1st Dist. 2010).
- 5 U.S.—[Proctor v. McNeil](#), 14 F. Supp. 3d 1108, 310 Ed. Law Rep. 157 (N.D. Ill. 2014) (under Illinois law).
- 6 N.Y.—[Retired Public Employees Ass'n, Inc. v. Cuomo](#), 123 A.D.3d 92, 995 N.Y.S.2d 757 (3d Dep't 2014).

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

#### B. Particular Rights

## § 496. Pensions as vested rights; insurance benefits

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑2645

**In general, the right to receive pension payments which have actually accrued and are due and owing is vested. The right to receive a pension under existing law is not a vested right when the pension is a bounty or gratuity; however, in many jurisdictions, public employees have a vested right to a pension or retirement allowance under an established system where they have fulfilled all the requirements therefor, and the contingency has happened on which the payments become payable.**

Persons entitled to receive pension payments which have actually accrued and become due and owing have a vested right thereto regardless of whether or not the pension is considered a gratuity or a form of deferred compensation.<sup>1</sup> Vested retirement rights may not be altered without the pensioner's consent.<sup>2</sup> In some jurisdictions, the rights of public officers or employees become vested at the time they accept employment and enter on their duties,<sup>3</sup> and therefore, even public employees who are not yet eligible to retire can have rights to their expected pension plan benefits.<sup>4</sup> If a government employee performs services during the effective dates of the legislation governing the calculation of retirement benefits, the benefits are generally considered to be constitutionally vested, and some state constitutions may preclude the legislative repeal of benefits as to the employee.<sup>5</sup> Once the rights of a public employee to his or her pension benefits are vested, the legislature is constitutionally prohibited from reducing that member's benefits absent some consideration for the reduction.<sup>6</sup>

Nonetheless, reasonable modifications and changes may be made in the pension or retirement system even though detrimental to the employee<sup>7</sup> and even though the pension law contains no express reservation of the right to repeal or modify the existing plan.<sup>8</sup> The modifications which result in disadvantages to the employee should be accompanied by commensurate advantages bearing a reasonable relationship to the benefits lost.<sup>9</sup> The test for reasonableness of the modifications is whether the alteration to the pension scheme serves to keep the system sound and flexible.<sup>10</sup>

A public employee who has not complied with the eligibility requirements to participation in a pension or retirement plan has no vested right therein.<sup>11</sup> Moreover, an employee who is covered under a state retirement system may be excluded, by statute or ordinance, from participating in the retirement system of a particular city.<sup>12</sup>

### ***Insurance and disability compensation.***

The rights of an insured in an insurance policy,<sup>13</sup> and the right of a beneficiary to the proceeds after fulfillment of the conditions precedent, are vested.<sup>14</sup>

### ***Forfeiture or suspension of pension benefits.***

Under some authority, a vested right to a pension may be forfeited if there is express statutory authority in the pension law itself, which authorizes its abrogation.<sup>15</sup> Accordingly, it has been found that a provision in a pension or retirement act for the forfeiture of benefits if a retired officer or employee subsequently enters the employment of the state or any political subdivision thereof is not invalid as being a forfeiture of vested rights.<sup>16</sup> Moreover, the vesting of an employee's rights to a pension does not preclude the forfeiture of state retirement benefits under a separate forfeiture statute.<sup>17</sup>

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#### Footnotes

- 1 Colo.—*Taylor v. Public Emp. Retirement Ass'n of Colorado*, 189 Colo. 486, 542 P.2d 383 (1975).  
Ohio—*State ex rel. Hanrahan v. Zupnik*, 161 Ohio St. 43, 52 Ohio Op. 481, 117 N.E.2d 689 (1954).  
W. Va.—*Taylor v. Board of Ed. of Cabell County*, 152 W. Va. 761, 166 S.E.2d 150 (1969).  
**Absolute vested pension rights cannot be modified**  
Nev.—*Nicholas v. State*, 116 Nev. 40, 992 P.2d 262 (2000).
- 2 Mich.—*Butler v. Wayne Co.*, 289 Mich. App. 664, 798 N.W.2d 37 (2010).
- 3 Cal.—*County of Orange v. Association of Orange County Deputy Sheriffs*, 192 Cal. App. 4th 21, 121 Cal. Rptr. 3d 151 (2d Dist. 2011).  
Ga.—*Withers v. Register*, 246 Ga. 158, 269 S.E.2d 431 (1980).  
Wash.—*Cooley v. Hollister*, 38 Wash. App. 447, 687 P.2d 230, 19 Ed. Law Rep. 1208 (Div. 3 1984).
- 4 W. Va.—*Myers v. West Virginia Consol. Public Retirement Bd.*, 226 W. Va. 738, 704 S.E.2d 738 (2010).
- 5 Ga.—*Unified Government of Athens-Clarke County v. McCrary*, 280 Ga. 901, 635 S.E.2d 150 (2006).
- 6 W. Va.—*Myers v. West Virginia Consol. Public Retirement Bd.*, 226 W. Va. 738, 704 S.E.2d 738 (2010).
- 7 Md.—*City of Frederick v. Quinn*, 35 Md. App. 626, 371 A.2d 724 (1977).  
Mich.—*Murphy v. Wayne County Emp. Retirement Bd. of Trustees*, 35 Mich. App. 480, 192 N.W.2d 568 (1971).  
Tenn.—*Blackwell v. Quarterly County Court of Shelby County*, 622 S.W.2d 535 (Tenn. 1981).  
**Amount, terms, and conditions of benefits may be altered**  
Cal.—*In re Retirement Cases*, 110 Cal. App. 4th 426, 1 Cal. Rptr. 3d 790 (1st Dist. 2003).  
**Reduction in mandatory retirement age is permissible change**

Cal.—*Miller v. State of California*, 18 Cal. 3d 808, 135 Cal. Rptr. 386, 557 P.2d 970 (1977).

Cal.—*Packer v. Board of Retirement of Los Angeles County Peace Officers' Retirement System*, 35 Cal. 2d 212, 217 P.2d 660 (1950).

Cal.—*Townsend v. County of Los Angeles*, 49 Cal. App. 3d 263, 122 Cal. Rptr. 500 (2d Dist. 1975).

Md.—*City of Frederick v. Quinn*, 35 Md. App. 626, 371 A.2d 724 (1977).

Wash.—*Frank v. Day's Inc.*, 13 Wash. App. 401, 535 P.2d 479 (Div. 2 1975).

W. Va.—*Wagoner v. Gainer*, 167 W. Va. 139, 279 S.E.2d 636 (1981).

Conn.—*Pineman v. Oechslein*, 195 Conn. 405, 488 A.2d 803 (1985).

La.—*Patterson v. City of Baton Rouge*, 309 So. 2d 306 (La. 1975).

Mo.—*Bresnahan v. Bass*, 562 S.W.2d 385 (Mo. Ct. App. 1978).

Ill.—*Jones v. Loaleen Mut. Ben. Ass'n*, 337 Ill. 431, 169 N.E. 254 (1929).

**When rights vest under insurance contract**

A party's rights under an insurance contract become vested, thus precluding the retroactive application of a statute under the due process clause, when the policy is issued rather than when the rights thereunder are asserted.

Ill.—*Brandt v. Time Ins. Co.*, 302 Ill. App. 3d 159, 235 Ill. Dec. 270, 704 N.E.2d 843 (1st Dist. 1998).

**Right to designate and change beneficiaries**

To an insured, the right to designate and change insurance beneficiaries may be a vested contractual right worthy of constitutional protection against impairment.

Cal.—*In re Marriage of O'Connell*, 8 Cal. App. 4th 565, 10 Cal. Rptr. 2d 334 (6th Dist. 1992).

Ark.—*Strauss v. Missouri State Life Ins. Co.*, 188 Ark. 286, 66 S.W.2d 299 (1933).

Ky.—*Bright v. Supreme Council of Catholic Knights and Ladies of America*, 183 Ky. 388, 209 S.W. 379 (1919).

Tex.—*Covington v. Covington*, 271 S.W.2d 849 (Tex. Civ. App. Dallas 1954).

Del.—*Dorsey v. State ex rel. Mulrine*, 283 A.2d 834 (Del. 1971).

**Rights could not be forfeited**

A police officer's pension rights became vested after he contributed to a retirement fund for 20 years as required by his contract, and he met the requirement of meritorious service at the time of his retirement; therefore, his pension could not be forfeited as a consequence of a felony conviction four years after his retirement.

Okla.—*Board of Trustees of Police Pension and Retirement System of Oklahoma City v. Weed*, 1986 OK 23, 719 P.2d 1276 (Okla. 1986).

Fla.—*State ex rel. Watson v. Lee*, 157 Fla. 62, 24 So. 2d 798, 163 A.L.R. 862 (1946).

Fla.—*Shields v. Smith*, 404 So. 2d 1106 (Fla. 1st DCA 1981).

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### PART II. Vested Rights and Retroactive Legislation

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## § 497. Other specific rights that may or may not be considered vested

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### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2630, 2632, 2634, 2640 to 2642, 2644, 2646, 2647

**Various other matters have been found to constitute or not to constitute vested rights subject to protection under the constitutional guaranty.**

Various other rights have been found to constitute vested rights, such as the right of a landowner to lateral support,<sup>1</sup> and a landowner's right of access to and from an existing road or other highway without unreasonable interference.<sup>2</sup> In addition, vested rights have been found to exist in valid contracts,<sup>3</sup> including leases,<sup>4</sup> deeds,<sup>5</sup> and in particular easements.<sup>6</sup>

Where private titles to public lands have once vested, they cannot be impaired or abrogated by subsequent legislation.<sup>7</sup> The right to carry on explorations for minerals on certain public lands by one who has expended considerable sums of money, under a statute permitting such explorations, has been found to be a vested right.<sup>8</sup>

In contrast, there are no vested rights in void, voidable, or illegal contracts;<sup>9</sup> in lis pendens;<sup>10</sup> in political rights;<sup>11</sup> in segregation or discrimination because of race or national origin;<sup>12</sup> in the illegal use of property;<sup>13</sup> and in particular rights involving aliens and citizenship.<sup>14</sup>



## Indians.

An Indian tribe has no vested right by virtue of an application to the Bureau of Indian Affairs to reserve excess government land for the benefit of the tribe,<sup>15</sup> and the cancellation of a lease of Indian lands does not deprive the lessee of any vested property right.<sup>16</sup> However, where there is an agreement between an Indian tribe and the federal government in the form of a treaty or of a statute, vested property rights may be created,<sup>17</sup> and in an Indian law context, legislation imposing a constraint or duty on vested property rights must be tied rationally to a legislative effort to protect and serve the interests of Native Americans.<sup>18</sup>

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## Footnotes

- 1 N.Y.—*In re Board of Rapid Transit R. Com'rs of City of New York*, 197 N.Y. 81, 90 N.E. 456 (1909).  
Ohio—*Belden v. Franklin*, 18 Ohio C.D. 373, 1906 WL 1573 (Ohio Cir. Ct. 1906).
- 2 Kan.—*Small v. Kemp*, 240 Kan. 113, 727 P.2d 904 (1986).
- 3 Del.—*Grant v. Nelli*, 377 A.2d 354 (Del. 1977).  
La.—*McGee v. Police Jury of Caddo Parish*, 66 So. 2d 408 (La. Ct. App. 2d Cir. 1953), judgment aff'd, 225 La. 471, 73 So. 2d 424 (1954).  
**Contractual interests may qualify as vested rights**  
N.J.—*State Troopers Fraternal Ass'n of New Jersey, Inc. v. State*, 149 N.J. 38, 692 A.2d 519 (1997).  
**Perfected security interest is vested right**  
Wash.—*In re F.D. Processing, Inc.*, 119 Wash. 2d 452, 832 P.2d 1303 (1992).  
**Third-party rights**  
A supplier designated by a contractor in its bidding documents had no vested right to manufacture and supply materials used in construction under a public contract where the supplier was only indirectly involved in the bidding process and did not become a party to the contract between the authority and the contractor.  
Fla.—*Wolf Ridge Plastics, Inc. v. Jacksonville Elec. Authority*, 388 So. 2d 1298 (Fla. 1st DCA 1980).
- 4 N.C.—*Mission Hospitals, Inc. v. North Carolina Dept. of Health and Human Services, Div. of Health Service Regulation*, 205 N.C. App. 35, 696 S.E.2d 163 (2010).  
**Right of reentry**  
Right of ground lease holders to reenter in event of default was a vested right, and therefore the retrospective impairment of such a right by a statute replacing ejectment with a lien-and-foreclosure process for certain defaulting lessees was a violation of the state constitutional prohibition on the retrospective abrogation of vested rights, as the right was part of the bundle of rights essential to the nature of a ground lease and was inseparable from the vested rights of reversion and collection of rent.  
Md.—*State v. Goldberg*, 437 Md. 191, 85 A.3d 231 (2014).  
**Rent control**  
Neither a property owner nor a tenant has a vested interest in beneficial rent stabilization regulations.  
N.Y.—*IG Second Generation Partners L.P. v. New York State Div. of Housing and Community Renewal*, 10 N.Y.3d 474, 859 N.Y.S.2d 598, 889 N.E.2d 475 (2008).
- 5 Tex.—*Loving v. Clem*, 30 S.W.2d 590 (Tex. Civ. App. Dallas 1930), writ refused, (Oct. 29, 1930).
- 6 N.C.—*City of Raleigh v. Edwards*, 235 N.C. 671, 71 S.E.2d 396 (1952).  
Tex.—*Strauch v. Coastal States Crude Gathering Co.*, 424 S.W.2d 677 (Tex. Civ. App. Corpus Christi 1968), writ dismissed, (May 1, 1968).
- 7 D.C.—*West v. Lyders*, 36 F.2d 108 (App. D.C. 1929).  
**Application to purchase land**  
The repeal and reenactment of a statute in force when an application was made to purchase purported island lands from the State could not affect the applicant's vested right to acquire the lands.  
U.S.—*U. S. Gypsum Co. v. Greif Bros. Cooperage Corp.*, 389 F.2d 252 (8th Cir. 1968).
- 8 Cal.—*Favot v. Kingsbury*, 98 Cal. App. 284, 276 P. 1083 (3d Dist. 1929).
- 9 U.S.—*McNair v. Knott*, 302 U.S. 369, 58 S. Ct. 245, 82 L. Ed. 307 (1937).

Ind.—*Walb v. Smith*, 80 Ind. App. 321, 137 N.E. 717 (1923).

Tex.—*Superior Incinerator Co. of Texas v. Tompkins*, 37 S.W.2d 391 (Tex. Civ. App. Dallas 1931), writ granted, (July 22, 1931) and aff'd, 59 S.W.2d 102 (Tex. Comm'n App. 1933).

**When contractual right is not vested**

A contractual right is not vested if it can be terminated, limited, or changed at any time.

Kan.—*Board of Educ. of Unified School Dist. No. 443, Ford County v. Kansas State Bd. of Educ.*, 266 Kan. 75, 966 P.2d 68, 130 Ed. Law Rep. 308 (1998).

**Bidders on public works contracts**

Neither the low bidder nor any other bidder has a vested property interest in a public works contract.

N.Y.—*Conduit and Foundation Corp. v. Metropolitan Transp. Authority*, 66 N.Y.2d 144, 495 N.Y.S.2d 340, 485 N.E.2d 1005 (1985).

Fla.—*Levine v. Arvida Corp.*, 405 So. 2d 1370 (Fla. 4th DCA 1981).

Cal.—*Clark v. Patterson*, 68 Cal. App. 3d 329, 137 Cal. Rptr. 275 (1st Dist. 1977).

La.—*City of Gretna v. South New Orleans Light & Traction Co.*, 4 La. App. 480, 1926 WL 3568 (Orleans 1926).

N.H.—*Amyot v. Caron*, 88 N.H. 394, 190 A. 134 (1937).

U.S.—*Wanner v. County School Bd. of Arlington County, Va.*, 357 F.2d 452 (4th Cir. 1966).

Kan.—*Rowles v. Board of Education of City of Wichita*, 76 Kan. 361, 91 P. 88 (1907).

Minn.—*State v. Lee*, 584 N.W.2d 11 (Minn. Ct. App. 1998).

U.S.—*Joseph v. Landon*, 679 F.2d 113 (7th Cir. 1982).

**Entry**

U.S.—*U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 70 S. Ct. 309, 94 L. Ed. 317 (1950).

U.S.—*Skokomish Indian Tribe v. General Services Administration*, 587 F.2d 428 (9th Cir. 1978).

U.S.—*Gray v. Johnson*, 395 F.2d 533 (10th Cir. 1968).

U.S.—*Morrow v. U.S.*, 243 F. 854 (C.C.A. 8th Cir. 1917).

**Vested rights not created**

Under an agreement, an Indian nation received no vested interest in a one-half portion of the mineral royalties recovered from tribal lands.

U.S.—*Seminole Nation of Oklahoma v. U. S.*, 204 Ct. Cl. 655, 498 F.2d 1368 (1974).

U.S.—*Littlewolf v. Hodel*, 681 F. Supp. 929 (D.D.C. 1988), judgment aff'd, 877 F.2d 1058 (D.C. Cir. 1989).

## 16A C.J.S. Constitutional Law II V C Refs.

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#### V. Vested Rights

##### C. Vested Rights in Particular Remedies and Procedural Rules

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Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### C. Vested Rights in Particular Remedies and Procedural Rules

## § 498. Vested rights to existing or former legal remedies, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑2648, 2649

**Unless the remedy is one that is expressly protected by a constitutional provision, there is no vested right to a particular remedy, and existing remedies may be changed or abolished provided a substantial remedy remains.**

There is no vested right to a particular remedy,<sup>1</sup> for the enforcement of a right, unless the remedy is one that is expressly protected by a constitutional provision.<sup>2</sup> This general rule often encapsulates even those remedies provided for by statute.<sup>3</sup> A statute is not unconstitutional, therefore, merely because it changes, abolishes, or impairs an existing remedy for a cause of action that has accrued prior to the passage of the statute,<sup>4</sup> or because the statute substitutes or exchanges one remedy for another remedy,<sup>5</sup> or restores a remedy which had been lost.<sup>6</sup>

It is not necessary that the remedy or remedies substituted or remaining be as effectual as those existing before the passage of the statute.<sup>7</sup> There must, however, be substituted or remain a remedy that is not merely colorable, but is real and substantial,<sup>8</sup> because the legislature may not eliminate an existing or vested remedy entirely.<sup>9</sup> A reasonable time must be allowed for the assertion of the remedy.<sup>10</sup>

*Effect of statute creating or enlarging remedies.*

No vested rights are impaired by a statute which creates a remedy for an existing right for which there has been no remedy.<sup>11</sup> Accordingly, statutes providing a new remedy,<sup>12</sup> or enlarging a remedy already existing,<sup>13</sup> although made to operate retrospectively, do not, per se, impair vested rights.<sup>14</sup>

*New conditions precedent to maintaining action imposed by statute.*

Conditions precedent to the maintenance of causes of action that have already accrued may be imposed by the legislature where the requirements operate only as reasonable restrictions on the exercise of the right to sue<sup>15</sup> but not where they operate as a denial or abridgment of existing rights.<sup>16</sup>

*Existing legal remedies of creditors.*

While statutes relating to the remedies of creditors may not divest a vested property right,<sup>17</sup> the legislature may change the remedies of creditors for the enforcement of existing debts<sup>18</sup> and may make such changes applicable to pending proceedings.<sup>19</sup> Thus, mortgagees<sup>20</sup> and lienholders lack vested rights in any particular remedy,<sup>21</sup> and creditors of an insolvent person have no vested right to a particular form or method of liquidation.<sup>22</sup>

**CUMULATIVE SUPPLEMENT**

**Cases:**

In North Carolina, the right to compensatory damages vests in a plaintiff upon injury, for purposes of the North Carolina's Constitution's protection of vested rights. [McKiver v. Murphy-Brown, LLC](#), 980 F.3d 937 (4th Cir. 2020).

**[END OF SUPPLEMENT]**

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Footnotes

- 1 Ill.—[GreenPoint Mortg. Funding, Inc. v. Poniewozik](#), 2014 IL App (1st) 132864, 387 Ill. Dec. 833, 23 N.E.3d 525 (App. Ct. 1st Dist. 2014).  
Kan.—[Dester v. Dester](#), 50 Kan. App. 2d 914, 335 P.3d 119 (2014).  
Neb.—[Staley v. City of Omaha](#), 271 Neb. 543, 713 N.W.2d 457 (2006).  
N.D.—[Manitoba Public Ins. Corp. v. Dakota Fire Ins. Co.](#), 2007 ND 206, 743 N.W.2d 788 (N.D. 2007).  
Tex.—[Employees Retirement System of Texas v. Putnam, LLC](#), 294 S.W.3d 309 (Tex. App. Austin 2009).  
**Applying remedial statutes retroactively does not violate constitution's prohibition on retroactive laws**  
Tex.—[City of Austin v. Whittington](#), 384 S.W.3d 766 (Tex. 2012).  
**Measure of damages**  
A plaintiff has no vested property right in a particular measure of damages since the legislature possesses broad authority to modify the scope and nature of such damages.  
Cal.—[American Bank & Trust Co. v. Community Hospital](#), 36 Cal. 3d 359, 204 Cal. Rptr. 671, 683 P.2d 670, 41 A.L.R.4th 233 (1984).  
**Torts yet to happen**

There is no vested right in any remedy for torts yet to happen.

Mich.—*Shavers v. Kelley*, 402 Mich. 554, 267 N.W.2d 72 (1978).

N.Y.—*Bank of U.S. v. Rosengarten*, 175 Misc. 677, 24 N.Y.S.2d 647 (Sup 1941).

Ill.—*White v. Sunrise Healthcare Corp.*, 295 Ill. App. 3d 296, 230 Ill. Dec. 197, 692 N.E.2d 1363 (2d Dist. 1998).

N.J.—*25 Fairmount Ave., Inc. v. Stockton*, 130 N.J. Super. 276, 326 A.2d 106 (Dist. Ct. 1974).

Va.—*Fletcher v. Tarasidis*, 219 Va. 658, 250 S.E.2d 739 (1979).

Ariz.—*Town of Chino Valley v. State Land Dept.*, 119 Ariz. 243, 580 P.2d 704 (1978).

Colo.—*Jefferson County Dept. of Social Services v. D. A. G.*, 199 Colo. 315, 607 P.2d 1004 (1980).

Va.—*Brushy Ridge Coal Co., Inc. v. Blevins*, 6 Va. App. 73, 367 S.E.2d 204 (1988).

**No constitutional right violated by changing remedy available at common law**

Ill.—*Trexler v. Chrysler Corp.*, 104 Ill. 2d 26, 83 Ill. Dec. 342, 470 N.E.2d 300 (1984).

**Procedural remedy**

A procedural remedy may be altered, curtailed, or repealed at the will of the legislature and therefore does not give rise to any vested interest.

Va.—*Hunter v. Com.*, 56 Va. App. 582, 695 S.E.2d 567 (2010).

U.S.—*In re Larson*, 260 B.R. 174 (Bankr. D. Colo. 2001).

Colo.—*Woodmoor Imp. Ass'n v. Property Tax Adm'r*, 895 P.2d 1087 (Colo. App. 1994).

Tenn.—*Brandon v. Warmath*, 198 Tenn. 38, 277 S.W.2d 408 (1955).

Mich.—*Rookledge v. Garwood*, 340 Mich. 444, 65 N.W.2d 785 (1954).

As to the constitutionality of statutes reviving causes of action barred by limitations, see § 502.

U.S.—*U.S. v. Standard Oil Co. of California*, 21 F. Supp. 645 (S.D. Cal. 1937), decree aff'd by, 107 F.2d 402 (C.C.A. 9th Cir. 1939).

Cal.—*Savnik v. Hall*, 74 Cal. App. 4th 733, 88 Cal. Rptr. 2d 417 (3d Dist. 1999).

N.J.—*Henderson v. Weber*, 131 N.J.L. 299, 35 A.2d 609 (N.J. Ct. Err. & App. 1944).

Fla.—*Morris v. American Bankers Ins. Co. of Fla.*, 184 So. 2d 906 (Fla. 3d DCA 1966).

Me.—*Warren v. Waterville Urban Renewal Authority*, 235 A.2d 295 (Me. 1967).

**Reasonable remedy must be afforded**

Va.—*Brushy Ridge Coal Co., Inc. v. Blevins*, 6 Va. App. 73, 367 S.E.2d 204 (1988).

**Adequate substitute remedy**

Kan.—*Bair v. Peck*, 248 Kan. 824, 811 P.2d 1176 (1991).

**Impaired or severely limited rights and remedies**

When legislation either substantially impairs vested rights or severely limits existing procedural remedies permitting court adjudication, thereby implicating the certain remedy provision of the constitution, the legislation will be upheld under that provision if, first, a reasonably effective alternative remedy is provided by the legislation or, second, if no such alternative remedy is provided, the purpose of the alteration or appeal of the existing cause of action or remedy is to eliminate or curtail a clear social or economic problem, and the alteration or appeal of the existing cause of action or remedy is a reasonable method of achieving such purpose.

W. Va.—*Randall v. Fairmont City Police Dept.*, 186 W. Va. 336, 412 S.E.2d 737 (1991).

Ariz.—*Church v. Rawson Drug & Sundry Co.*, 173 Ariz. 342, 842 P.2d 1355 (Ct. App. Div. 1 1992).

Okla.—*Loyal Order of Moose, Lodge 1785 v. Cavaness*, 1977 OK 70, 563 P.2d 143, 93 A.L.R.3d 1234 (Okla. 1977).

Pa.—*Gibson v. Com.*, 490 Pa. 156, 415 A.2d 80 (1980).

Ky.—*Johnson v. Gans Furniture Industries, Inc.*, 114 S.W.3d 850 (Ky. 2003).

Ohio—*Lash v. Mann*, 141 Ohio St. 577, 26 Ohio Op. 158, 49 N.E.2d 689 (1943).

La.—*State v. Standard Oil Co. of Louisiana*, 188 La. 978, 178 So. 601 (1937).

Mich.—*Nathan v. Rupcic*, 303 Mich. 201, 6 N.W.2d 484 (1942).

Neb.—*Weimer v. Amen*, 235 Neb. 287, 455 N.W.2d 145 (1990).

Kan.—*Casebeer v. Alliance Mut. Cas. Co.*, 203 Kan. 425, 454 P.2d 511 (1969) (disapproved of on other grounds by, *Kissick v. Salina Mfg. Co.*, 204 Kan. 849, 466 P.2d 344 (1970)).

Ohio—*Colling v. Franklin Cty. Children Serv.*, 89 Ohio App. 3d 245, 624 N.E.2d 230 (10th Dist. Franklin County 1993).

Va.—*Stroobants v. Fugate*, 209 Va. 275, 163 S.E.2d 192 (1968).

- 13 U.S.—*State Ins. Fund v. Pesce*, 548 F.2d 1112 (2d Cir. 1977).  
Ohio—*State ex rel. City of South Euclid v. Zangerle*, 145 Ohio St. 433, 31 Ohio Op. 57, 62 N.E.2d 160 (1945).  
Tenn.—*Dowlen v. Fitch*, 196 Tenn. 206, 264 S.W.2d 824, 41 A.L.R.2d 791 (1954).
- 14 U.S.—*State Ins. Fund v. Pesce*, 548 F.2d 1112 (2d Cir. 1977).  
La.—*Shreveport Long Leaf Lumber Co. v. Wilson*, 195 La. 814, 197 So. 566 (1940).  
N.Y.—*Yoli v. Yoli*, 55 Misc. 2d 416, 285 N.Y.S.2d 470 (Sup 1967).  
**Comparative negligence**  
The retroactive application of comparative negligence statutes does not abrogate vested rights.  
Minn.—*Keefer v. Al Johnson Const. Co.*, 292 Minn. 91, 193 N.W.2d 305 (1971).  
**Division of marital property**  
The retroactive application of an act providing that all marital property is to be divided in just proportions concerning all relevant factors upon the dissolution of a marriage does not impair vested property rights.  
Ill.—*In re Marriage of Thornqvist*, 79 Ill. App. 3d 791, 35 Ill. Dec. 342, 399 N.E.2d 176 (1st Dist. 1979).  
**Malpractice act**  
The retroactive application of an amendment to the health care malpractice act, providing that a notice to sue provision was not applicable to causes of action arising prior to the enactment of the act, did not deprive the defendants in suits under the act of any vested interest since the notice to sue provision was not a statute of limitations and did not have the effect of barring any of the actions filed.  
Utah—*McGuire v. University of Utah Medical Center*, 603 P.2d 786 (Utah 1979).
- 15 Cal.—*Halbert v. Berlinger*, 127 Cal. App. 2d 6, 273 P.2d 274 (3d Dist. 1954).  
Wash.—*Hewitt Logging Co. v. Northern Pac. Ry. Co.*, 97 Wash. 597, 166 P. 1153, 3 A.L.R. 198 (1917).
- 16 Mo.—*Ruecking Const. Co. v. Withnell*, 269 Mo. 546, 191 S.W. 685 (1916), *aff'd*, 249 U.S. 63, 39 S. Ct. 200, 63 L. Ed. 479 (1919).
- 17 N.C.—*Nash v. Board of Com'rs of St. Pauls*, 211 N.C. 301, 190 S.E. 475 (1937).  
As to the vested rights of creditors, generally, see § 481.
- 18 U.S.—*Ginsberg v. Lindel*, 107 F.2d 721 (C.C.A. 8th Cir. 1939).  
Ill.—*Moore v. Zelic*, 338 Ill. 583, 170 N.E. 664 (1930).  
N.Y.—*In re Stern's Estate*, 161 Misc. 272, 291 N.Y.S. 732 (Sur. Ct. 1936).
- 19 Fla.—*Scott v. Jenkins*, 46 Fla. 518, 35 So. 101 (1902).
- 20 U.S.—*Prideaux v. Des Moines Joint-Stock Land Bank*, 34 F.2d 308 (D. Minn. 1929).
- 21 U.S.—*Ginsberg v. Lindel*, 107 F.2d 721 (C.C.A. 8th Cir. 1939).  
La.—*Shreveport Long Leaf Lumber Co. v. Wilson*, 195 La. 814, 197 So. 566 (1940).  
Mass.—*Manchester v. Popkin*, 237 Mass. 434, 130 N.E. 62 (1921).  
**Liens**  
A creditor has no vested right that the collateral to which a lien attaches will have the equity to pay the lien when and if it is liquidated.  
U.S.—*In re Bartlett*, 168 B.R. 488 (Bankr. D. N.H. 1994).
- 22 Cal.—*Carpenter v. Pacific Mut. Life Ins. Co. of Cal.*, 10 Cal. 2d 307, 74 P.2d 761 (1937), judgment *aff'd*, 305 U.S. 297, 59 S. Ct. 170, 83 L. Ed. 182 (1938).  
Minn.—*Timmer v. Hardwick State Bank*, 194 Minn. 586, 261 N.W. 456 (1935).  
Wis.—*Corstvet v. Bank of Deerfield*, 220 Wis. 209, 263 N.W. 687 (1935).  
**No vested right in priorities under former Bankruptcy Act**  
U.S.—*In re Pioneer Sample Book Co.*, 374 F.2d 953 (3d Cir. 1967).

## 16A C.J.S. Constitutional Law § 499

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### C. Vested Rights in Particular Remedies and Procedural Rules

## § 499. Application of new law governing remedies to pending legal proceedings

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2648, 2649

**A statute which relates merely to matters of remedy may be made applicable to pending proceedings at any time before the final judgment of the court becomes effective.**

A statute which relates merely to matters of remedy may be made applicable to proceedings commenced before its passage,<sup>1</sup> at any time before the final judgment of the court becomes effective.<sup>2</sup> Thus, a statute may provide for the survival of causes of action on which suit has already been brought although such rights of action have not survived under the law in force when the suit is commenced.<sup>3</sup>

From the time that a statute relating to the remedy takes effect, the proceedings in a pending suit may no longer be conducted under the former law,<sup>4</sup> but all proceedings taken thereafter must be under the new law.<sup>5</sup> Thus, a statute which sets a new rate for the exemption of earnings in a garnishment proceeding does not divest a vested right when applied to a pending case.<sup>6</sup>

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Footnotes

- 1 U.S.—*Koger v. Ball*, 497 F.2d 702 (4th Cir. 1974).  
Fla.—*Village of El Portal v. City of Miami Shores*, 362 So. 2d 275 (Fla. 1978).  
Ill.—*Talandis Const. Corp. v. Illinois Bldg. Authority*, 60 Ill. App. 3d 715, 18 Ill. Dec. 84, 377 N.E.2d 237 (1st Dist. 1978).  
Mich.—*Seaton v. Wayne County Prosecutor*, 233 Mich. App. 313, 590 N.W.2d 598 (1998).
- 2 Ill.—*Weil-McLain Co. v. Collins*, 395 Ill. 503, 71 N.E.2d 91 (1946).  
**No vested right in judgment on appeal**  
Applying an amendment to the statute governing a cap on the tort liability of a state governmental entity to a case in which an appeal was pending at the time the amendment was enacted did not divest the plaintiffs of any private vested right; there was no vested right in a judgment on appeal.  
Minn.—*Pirkov-Middaugh By and Through Middaugh v. Gillette Children's Hosp.*, 495 N.W.2d 608 (Minn. 1993).  
§ 500.
- 3
- 4 Cal.—*Title Ins. & Trust Co. v. Lusk*, 15 Cal. App. 358, 115 P. 53 (2d Dist. 1911).
- 5 Or.—*Spicer v. Benefit Ass'n of Ry. Employees*, 142 Or. 574, 21 P.2d 187, 90 A.L.R. 517 (1933).  
Tex.—*Natural Gas Clearinghouse v. Midgard Energy Co.*, 113 S.W.3d 400 (Tex. App. Amarillo 2003).
- 6 La.—*Hooter v. Wilson*, 273 So. 2d 516 (La. 1973).

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## 16A C.J.S. Constitutional Law § 500

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### C. Vested Rights in Particular Remedies and Procedural Rules

## § 500. Vested rights in civil pleading and practice rules; rules of criminal procedure

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2648, 2649

**Except as they may be expressly protected by constitutional provisions, no one has a vested right in the rules of practice or modes of procedure in force when a cause of action accrues or suit is brought.**

Except as they may be expressly protected by constitutional provisions,<sup>1</sup> no one has a vested right in any particular rule of practice or mode of procedure<sup>2</sup> in force when a cause of action accrues or suit is brought, and such rules of practice or modes of procedure may be amended, altered, or repealed, and others substituted in their place, and the changes made applicable to pending actions at any time before the final judgment of the court becomes effective, or at least before vested rights have been acquired under them,<sup>3</sup> provided an adequate remedy or the essential elements of protection remain.<sup>4</sup> Thus, statutes may be enacted prescribing a method of trial of facts, subject to the supervision of the court, in matters of law,<sup>5</sup> or changing the number of jurors necessary to render a verdict.<sup>6</sup>

There is no vested right in the rules of pleading, and the legislature may enact, alter, or repeal such rules even as to existing causes of action and pending suits.<sup>7</sup> Similarly, the legislature may, without violating constitutional provisions protecting vested rights, alter the rules as to parties to actions.<sup>8</sup>

Unless provided otherwise by the act itself, the new statute governs all proceedings had thereafter, including those in actions that have accrued and are pending at the time of its passage.<sup>9</sup> A plaintiff may not be deprived of the right to rely on an order allowing an adverse examination of the defendant pursuant to a then-existing statute by a subsequent change in the rules of procedure.<sup>10</sup>

### *Abatement and survival of actions.*

It is beyond the power of the legislature to revive an action which has abated prior to the passage of a statute providing for the survival of actions on the death of a party.<sup>11</sup>

### *Jurisdiction and venue.*

Acts affecting the jurisdiction of courts relate to a matter of remedy merely and are therefore valid even though they are made to operate on existing<sup>12</sup> and pending causes of action.<sup>13</sup>

### *Criminal cases.*

A purely procedural change in the law applies to pending criminal cases.<sup>14</sup> Therefore, an accused person usually has no vested right in any particular form of criminal procedure,<sup>15</sup> rules of evidence,<sup>16</sup> or in any one method of jury selection.<sup>17</sup>

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### Footnotes

- 1 N.J.—[Morin v. Becker](#), 6 N.J. 457, 79 A.2d 29 (1951).  
N.Y.—[Bank of U.S. v. Rosengarten](#), 175 Misc. 677, 24 N.Y.S.2d 647 (Sup 1941).
- 2 Ill.—[GreenPoint Mortg. Funding, Inc. v. Poniewozik](#), 2014 IL App (1st) 132864, 387 Ill. Dec. 833, 23 N.E.3d 525 (App. Ct. 1st Dist. 2014).  
Kan.—[Dester v. Dester](#), 50 Kan. App. 2d 914, 335 P.3d 119 (2014).  
La.—[Church Mut. Ins. Co. v. Dardar](#), 145 So. 3d 271 (La. 2014).  
Mo.—[Hess v. Chase Manhattan Bank USA, N.A.](#), 2006 WL 768513 (Mo. Ct. App. W.D. 2006), transferred to Mo. S. Ct., 220 S.W.3d 758 (Mo. 2007).  
Tex.—[Employees Retirement System of Texas v. Putnam, LLC](#), 294 S.W.3d 309 (Tex. App. Austin 2009).
- 3 Ala.—[Tyson v. Johns-Manville Sales Corp.](#), 399 So. 2d 263 (Ala. 1981).  
D.C.—[Scholtz Partnership v. District of Columbia Rental Accommodations Commission](#), 427 A.2d 905 (D.C. 1981).  
Fla.—[American Bankers Ins. Co. v. Little](#), 393 So. 2d 1063 (Fla. 1980).  
Ill.—[Maiter v. Chicago Bd. of Ed.](#), 82 Ill. 2d 373, 47 Ill. Dec. 721, 415 N.E.2d 1034 (1980).  
Mo.—[Hess v. Chase Manhattan Bank USA, N.A.](#), 2006 WL 768513 (Mo. Ct. App. W.D. 2006), transferred to Mo. S. Ct., 220 S.W.3d 758 (Mo. 2007).  
Neb.—[State v. Palmer](#), 224 Neb. 282, 399 N.W.2d 706 (1986).  
**No vested right to particular mode of procedure**  
Ariz.—[State v. Leonard](#), 151 Ariz. 1, 725 P.2d 493 (Ct. App. Div. 1 1986).  
Fla.—[Life Care Centers of America, Inc. v. Sawgrass Care Center, Inc.](#), 683 So. 2d 609 (Fla. 1st DCA 1996).  
**Applying procedural statutes retroactively does not violate constitution's prohibition on retroactive laws**  
Tex.—[City of Austin v. Whittington](#), 384 S.W.3d 766 (Tex. 2012).  
**Procedural forum**  
When a state gives additional or alternative procedural forums for a cause of action, there is no constitutionally protected property interest in the forum itself under the Due Process Clause; however, the cause of action itself constitutes a cognizable property interest.

U.S.—*Rosu v. City of New York*, 742 F.3d 523 (2d Cir. 2014), cert. denied, 135 S. Ct. 710, 190 L. Ed. 2d 439 (2014).

**Accelerating date stockholder liability is due affects procedure**

No vested rights are impaired when a constitutional amendment accelerates the date stockholder liability is due in a bank insolvency action because the amendment affects only the method of procedure, not a substantive right.

Neb.—*Howard Kool Chevrolet, Inc. v. Blomstedt*, 2 Neb. App. 493, 511 N.W.2d 222, 25 U.C.C. Rep. Serv. 2d 310 (1994).

Alaska—*Arctic Structures, Inc. v. Wedmore*, 605 P.2d 426 (Alaska 1979).

Ariz.—*Town of Chino Valley v. State Land Dept.*, 119 Ariz. 243, 580 P.2d 704 (1978).

Fla.—*Morris v. American Bankers Ins. Co. of Fla.*, 184 So. 2d 906 (Fla. 3d DCA 1966).

Ga.—*Wood v. Mobley*, 114 Ga. App. 170, 150 S.E.2d 358 (1966).

Idaho—*State v. Griffith*, 97 Idaho 52, 539 P.2d 604 (1975).

U.S.—*R. F. C. v. Bankers Trust Co.*, 318 U.S. 163, 63 S. Ct. 515, 87 L. Ed. 680 (1943).

Ill.—*Illinois Life Ins. Co. v. Prentiss*, 277 Ill. 383, 115 N.E. 554 (1917).

N.J.—*Morin v. Becker*, 6 N.J. 457, 79 A.2d 29 (1951).

**Number of jurors required for verdict**

A plaintiff who instituted a personal injury action prior to the effective date of the rule permitting a verdict in a civil action to be rendered by five-sixths of the jurors did not have a vested right to a verdict rendered under the old rule requiring an unanimous verdict in the absence of the stipulation of the parties.

Iowa—*Anderson v. Goodyear Tire & Rubber Co.*, 259 N.W.2d 814 (Iowa 1977).

Ky.—*Howard v. Gibson*, 22 Ky. L. Rptr. 1294, 60 S.W. 491 (Ky. 1901).

N.Y.—*Application of Port of New York Authority*, 202 Misc. 1104, 118 N.Y.S.2d 11 (Sup 1952), order aff'd, 281 A.D. 818, 118 N.Y.S.2d 921 (1st Dep't 1953).

S.D.—*Hopkins v. Glendenning*, 68 S.D. 208, 299 N.W. 905 (1941).

**Putative fathers**

Putative fathers have no vested right in not being made a party to a paternity action.

N.D.—*In Interest of W. M. V.*, 268 N.W.2d 781 (N.D. 1978).

Cal.—*National Auto. & Cas. Ins. Co. v. Downey*, 98 Cal. App. 2d 586, 220 P.2d 962 (2d Dist. 1950).

Del.—*Empire Box Corp. v. Jefferson Island Salt Mining Co.*, 42 Del. 258, 31 A.2d 240 (1943).

La.—*Shreveport Long Leaf Lumber Co. v. Wilson*, 195 La. 814, 197 So. 566 (1940).

N.J.—*Morin v. Becker*, 6 N.J. 457, 79 A.2d 29 (1951).

N.C.—*Williams v. Blount*, 14 N.C. App. 139, 187 S.E.2d 464 (1972).

Ala.—*Land v. Cooper*, 250 Ala. 271, 34 So. 2d 313 (1948).

Ky.—*Leiserson & Adler, Inc. v. Keam*, 266 S.W.2d 352 (Ky. 1954).

U.S.—*Hare v. United Airlines Corp.*, 295 F. Supp. 860 (N.D. Ga. 1968).

N.Y.—*In re Di Filippo's Estate*, 162 Misc. 423, 294 N.Y.S. 802 (Sur. Ct. 1937).

Tenn.—*State ex rel. Ward v. Murrell*, 169 Tenn. 688, 90 S.W.2d 945 (1936).

**Applying jurisdictional statutes retroactively does not violate constitution's prohibition on retroactive laws**

Tex.—*City of Austin v. Whittington*, 384 S.W.3d 766 (Tex. 2012).

U.S.—*Leavitt v. Arave*, 927 F. Supp. 394 (D. Idaho 1996).

Vt.—*Johnson v. Smith*, 78 Vt. 145, 62 A. 9 (1905).

Ariz.—*State v. Cota*, 234 Ariz. 180, 319 P.3d 242 (Ct. App. Div. 2 2014).

Mass.—*State v. Cota*, 234 Ariz. 180, 319 P.3d 242 (Ct. App. Div. 2 2014).

Ga.—*Eades v. State*, 232 Ga. 735, 208 S.E.2d 791 (1974).

La.—*State v. Andrews*, 451 So. 2d 175 (La. Ct. App. 1st Cir. 1984), writ denied, 457 So. 2d 17 (La. 1984).

**Procedural and substantive law distinguished**

"Procedural law" prescribes the method of enforcing a right or obtaining redress for the invasion of that right whereas "substantive law," a change to which does not apply to pending criminal cases, creates, defines, and regulates rights.

Ariz.—*State v. Cota*, 234 Ariz. 180, 319 P.3d 242 (Ct. App. Div. 2 2014).

Ga.—*State v. Levins*, 234 Ga. App. 739, 507 S.E.2d 246 (1998).

U.S.—*U.S. v. Flynn*, 106 F. Supp. 966 (S.D. N.Y. 1952).

La.—[State v. Copeland](#), 255 La. 91, 229 So. 2d 710 (1969).

N.Y.—[Cabanis v. Reich](#), 59 Misc. 2d 821, 300 N.Y.S.2d 416 (Sup 1969).

**Peremptory challenges**

The defendant did not have a vested right to the number of peremptory challenges permitted at the time the crime was committed since a subsequent amendment reducing the number was merely procedural; thus, it could have retroactive effect without violating the constitutional prohibition against ex post facto laws.

La.—[State v. Harrison](#), 471 So. 2d 1088 (La. Ct. App. 3d Cir. 1985).

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## 16A C.J.S. Constitutional Law § 501

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### C. Vested Rights in Particular Remedies and Procedural Rules

## § 501. Statutes of limitation

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑2650

**Generally, no one has a vested right in a statute of limitations, and the legislature may regulate the time, even on existing causes of action, provided that if the period is shortened, an adequate means of enforcing the right of action remains.**

Generally, no one has a vested right in a statute of limitations,<sup>1</sup> and it is competent for the legislature, either by extending or reducing the period of limitation, to regulate the time within which suits may be brought even on existing causes of action.<sup>2</sup> The power to reduce the period of limitation, however, is subject to the fundamental condition that an adequate means of enforcing the right of action remains and that a reasonable time will be allowed for the exercise of the right, whether existing or prospective, after it comes within the prospective or present operation of the statute and before the bar becomes effective.<sup>3</sup>

It has been found that a suit filed against particular defendants prior to the effective date of a statute of limitations provides a plaintiff with a vested right to make additional parties defendants as solitary obligors without being barred by prescription or preemption where such statute does not allow a reasonable time for those affected by the statute to assert their rights.<sup>4</sup> Furthermore, the legislature may not, without notice, deprive a person of a vested right given by a statute relating to medical malpractice actions, providing that where a patient files a claim with a medical malpractice review board, the statute of limitations will not begin to run until the board disposes of the claim.<sup>5</sup>

***Reasonableness of time.***

What constitutes a reasonable time, within the meaning of the rule that a statute reducing the period of limitations must allow a reasonable time to commence an action before the bar becomes effective, is primarily a question for the legislature to determine.<sup>6</sup> Accordingly, the courts cannot fix a time different from that fixed by the legislature within which suits may be brought, nor if the legislature fails to fix any time can the courts supply the legislative lapse.<sup>7</sup> The period fixed by the legislature will be declared unreasonable where it is so manifestly inadequate as to amount to a denial of justice.<sup>8</sup>

***Counterclaims.***

The application of a statute which permits the filing of a viable counterclaim in an action where the original action is timely filed does not infringe upon any vested rights where the counterclaim has accrued prior to the enactment of the statute.<sup>9</sup>

***Suspending operation of statute.***

Acts suspending for good cause the operation of statutes of limitation are usually sustained as constitutional, as affecting merely the remedy, and to the extent at least that they do not affect actions already barred, they may be made to apply to causes of action that have arisen prior to their passage.<sup>10</sup> They have also been found valid as applied to actions already barred<sup>11</sup> as an application of the rule followed in some jurisdictions which permits the removal of a completed bar as to personal demands but not as to actions concerning title to property.<sup>12</sup>

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**Footnotes**

- 1 Ark.—[Reeves v. State](#), 374 Ark. 415, 288 S.W.3d 577 (2008).  
Ky.—[Officeware v. Jackson](#), 247 S.W.3d 887 (Ky. 2008).
- 2 Ga.—[Vaughn v. Vulcan Materials Co.](#), 266 Ga. 163, 465 S.E.2d 661 (1996).  
Ky.—[Officeware v. Jackson](#), 247 S.W.3d 887 (Ky. 2008).  
Minn.—[U.S. Home Corp. v. Zimmerman Stucco and Plaster, Inc.](#), 749 N.W.2d 98 (Minn. Ct. App. 2008).  
Neb.—[Macku By and Through Macku v. Drackett Products Co.](#), 216 Neb. 176, 343 N.W.2d 58 (1984).  
Okla.—[Trinity Broadcasting Corp. v. Leeco Oil Co.](#), 1984 OK 80, 692 P.2d 1364 (Okla. 1984).  
**Breach of contract action**  
In a homeowners' suit for breach of contract to furnish suitable remodeling plans, the architect acquired no vested right to assert a two-year statute of limitations, which was in effect at the time the cause of action for breach of contract accrued, where the limitations period was increased prior to the time the two-year period had run.  
Tex.—[Coffey v. Young](#), 704 S.W.2d 591 (Tex. App. Fort Worth 1986).  
**Paternity action**  
A paternity action, which was barred by the statute of limitations, could not be constitutionally revived by the later passage of an act and its new statute of limitations, which would not have barred the suit.  
Colo.—[Jefferson County Dept. of Social Services v. D. A. G.](#), 199 Colo. 315, 607 P.2d 1004 (1980).  
Mo.—[W.B. v. M.G.R.](#), 955 S.W.2d 935 (Mo. 1997).
- 3 La.—[Chumley v. Magee](#), 33 So. 3d 345 (La. Ct. App. 2d Cir. 2010), writ denied, 45 So. 3d 1046 (La. 2010).  
N.Y.—[McGuirk v. City School Dist. of City of Albany](#), 116 A.D.2d 363, 501 N.Y.S.2d 477, 31 Ed. Law Rep. 1230 (3d Dep't 1986).  
Tenn.—[Pacific Eastern Corp. v. Gulf Life Holding Co.](#), 902 S.W.2d 946 (Tenn. Ct. App. 1995).
- 4 Mass.—[Dunbar v. Boston & P.R. Corp.](#), 181 Mass. 383, 63 N.E. 916 (1902).

- 5 N.Y.—*People ex rel. Equitable Holding Corp. v. Graves*, 176 Misc. 327, 27 N.Y.S.2d 509 (Sup 1941), order  
aff'd, 263 A.D. 468, 33 N.Y.S.2d 476 (3d Dep't 1942).
- U.S.—*Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 65 S. Ct. 1137, 89 L. Ed. 1628 (1945).
- Minn.—*Donaldson v. Chase Securities Corporation*, 216 Minn. 269, 13 N.W.2d 1 (1943), judgment aff'd,  
325 U.S. 304, 65 S. Ct. 1137, 89 L. Ed. 1628 (1945).
- 6 Kan.—*Rostocil v. United Oil and Gas Royalty Ass'n*, 177 Kan. 15, 274 P.2d 761 (1954).
- La.—*Rusher v. Winningham Nissan Volvo, Inc.*, 550 So. 2d 784 (La. Ct. App. 2d Cir. 1989).
- 7 Mont.—*Berkin v. Healy*, 52 Mont. 398, 158 P. 1020 (1916).
- 8 La.—*Rusher v. Winningham Nissan Volvo, Inc.*, 550 So. 2d 784 (La. Ct. App. 2d Cir. 1989).
- 9 Cal.—*Liptak v. Diane Apartments, Inc.*, 109 Cal. App. 3d 762, 167 Cal. Rptr. 440 (2d Dist. 1980).
- Fla.—*Mazda Motors of America, Inc. v. S. C. Henderson & Sons, Inc.*, 364 So. 2d 107 (Fla. 1st DCA 1978).
- Me.—*Dobson v. Quinn Freight Lines, Inc.*, 415 A.2d 814 (Me. 1980).
- Wis.—*Ortman v. Jensen & Johnson, Inc.*, 66 Wis. 2d 508, 225 N.W.2d 635 (1975).
- 10 N.Y.—*People ex rel. Equitable Holding Corp. v. Graves*, 176 Misc. 327, 27 N.Y.S.2d 509 (Sup 1941), order  
aff'd, 263 A.D. 468, 33 N.Y.S.2d 476 (3d Dep't 1942).
- As to vested rights in remedies, generally, see § 498.
- 11 U.S.—*Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 65 S. Ct. 1137, 89 L. Ed. 1628 (1945).
- Cal.—*Liptak v. Diane Apartments, Inc.*, 109 Cal. App. 3d 762, 167 Cal. Rptr. 440 (2d Dist. 1980).
- Me.—*Dobson v. Quinn Freight Lines, Inc.*, 415 A.2d 814 (Me. 1980).
- Mich.—*Pryber v. Marriott Corp.*, 98 Mich. App. 50, 296 N.W.2d 597 (1980), decision aff'd, 411 Mich. 887,  
307 N.W.2d 333 (1981).
- Mo.—*State ex rel. Research Medical Center v. Peters*, 631 S.W.2d 938 (Mo. Ct. App. W.D. 1982).
- Criminal prosecutions**
- A defendant has no vested interest in the statute of limitations existing at the time of his or her alleged  
criminal act, and until the statute has run, the legislature has the power to alter the statute without offending  
any rights of the accused.
- N.Y.—*People v. Glowa*, 87 Misc. 2d 471, 384 N.Y.S.2d 673 (Sup 1976).
- Reversionary interests**
- A marketable title statute which requires the filing of a notice of claim of a reversionary interest a specified  
number of years from the date of the recording of title does not abolish or alter any vested rights but  
rather modifies the procedure for effectuation of a holder's remedy by conditionally limiting the time for  
enforcement of the right and does not serve to unconstitutionally deprive the holders of reversions of any  
vested rights.
- Iowa—*Presbytery of Southeast Iowa v. Harris*, 226 N.W.2d 232 (Iowa 1975).
- 12 § 502.



## 16A C.J.S. Constitutional Law § 502

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### Constitutional Law

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### C. Vested Rights in Particular Remedies and Procedural Rules

## § 502. Statutes of limitation—Affecting causes of action barred

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2650

**According to some authorities, the legislature cannot remove a statutory bar that is complete, but other authorities do not deny legislative power in all cases, and permit removal of a completed bar in any class of actions in which a party does not become invested with title to property by the statute of limitations.**

Under some authorities, it is the general rule, without exception or qualification, that the legislature cannot remove a statutory bar to a cause of action that has already become complete.<sup>1</sup> It has been found that once the statute of limitations has expired, the defendant has a vested right to invoke the bar of the limitations period as a defense to the cause of action and that the right cannot be taken away by the legislature without offending the due process protections of the state constitution.<sup>2</sup> Furthermore, such removal cannot be done by action of the judiciary.<sup>3</sup>

On the other hand, in some states, the shelter of a statute of limitations is not a fundamental right, and the lapse of a statute of limitations does not endow a citizen with a vested property right in immunity from suit.<sup>4</sup> It has been recognized that the constitutional provisions protecting vested rights allow a certain limited degree of latitude in dealing with cases where remedies have been extinguished by the lapse of time when the seeming infraction of the right is not very great and when justice requires relief.<sup>5</sup> Accordingly, in some jurisdictions, a distinction has been made between a statutory bar operating to invest persons with

title to property and a bar which constitutes merely a defense to a personal demand; it is thus found that in actions on contract, or in any class of actions in which a party does not become invested with title to property by the statutory bar, the legislature may by repealing the statute, even after the right of action is barred, restore the remedy and divest the other party of the statutory bar.<sup>6</sup>

Where a title has been acquired through the operation of statutes of limitation, the bar of the statute may not be removed.<sup>7</sup> Moreover, where one's property is freed from a lien by the running of the statute of limitations, the lien cannot be recreated without his or her consent.<sup>8</sup>

It has been found that the rule permitting removal of a bar already complete does not apply where the statutory provision fixing the time within which suit may be brought constitutes a part of the definition of a cause of action created by the same or another provision and operates as a limitation on liability.<sup>9</sup> There can be no right gained in the running of the statute until the prescribed period of limitations is completed,<sup>10</sup> and where only one particular form of remedy is barred, while other equivalent forms remain, there can be no objection to a removal of a bar on the first.<sup>11</sup>

### *Actions and claims against State.*

The State may remove the bar of a statute that has already attached to causes of action against the State.<sup>12</sup> The time for applying for revision of state taxes imposed may be enlarged so as to permit application by persons previously barred by limitations.<sup>13</sup>

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### Footnotes

- 1 Cal.—*In re Marriage of B.*, 124 Cal. App. 3d 524, 177 Cal. Rptr. 429 (2d Dist. 1981).  
Kan.—*Stephens v. Snyder Clinic Ass'n*, 230 Kan. 115, 631 P.2d 222 (1981).  
La.—*Lott v. Haley*, 370 So. 2d 521 (La. 1979).  
Neb.—*Denver Wood Products Co. v. Frye*, 202 Neb. 286, 275 N.W.2d 67 (1979).  
**Reduction in age of majority**  
Ohio—*Durham v. Anka Research Ltd.*, 60 Ohio App. 2d 239, 14 Ohio Op. 3d 222, 396 N.E.2d 799 (1st Dist. Hamilton County 1978).
- 2 Ill.—*Doe A. v. Diocese of Dallas*, 234 Ill. 2d 393, 334 Ill. Dec. 649, 917 N.E.2d 475 (2009).  
Mo.—*State ex rel. Umelu v. Edwards*, 963 S.W.2d 670 (Mo. Ct. App. W.D. 1997).  
Tex.—*Rice v. Louis A. Williams & Associates, Inc.*, 86 S.W.3d 329 (Tex. App. Texarkana 2002).  
Utah—*State v. Apotex Corp.*, 2012 UT 36, 282 P.3d 66 (Utah 2012).  
As to vested rights in defenses, generally, see § 486.  
**Construction of statute of repose unconstitutional as applied**  
Ohio—*Oaktree Condominium Assn., Inc. v. Hallmark Bldg. Co.*, 139 Ohio St. 3d 264, 2014-Ohio-1937, 11 N.E.3d 266 (2014).
- 3 La.—*Clements v. State Dept. of Health, Social & Rehabilitation Services*, 391 So. 2d 66 (La. Ct. App. 4th Cir. 1980), writ denied, 396 So. 2d 932 (La. 1981).
- 4 Idaho—*Peterson v. Peterson*, 156 Idaho 85, 320 P.3d 1244 (2014).
- 5 Tenn.—*Morris v. Gross*, 572 S.W.2d 902 (Tenn. 1978).  
**Reviving a claim**  
There is no vested right in a statute of limitation, and the legislature may revive a claim which would have been barred by a previous limitation period by enacting a new statute of limitation without violating the constitutional prohibition against retroactive laws.  
Ga.—*Vaughn v. Vulcan Materials Co.*, 266 Ga. 163, 465 S.E.2d 661 (1996).
- 6 Miss.—*Barbour v. Williams*, 196 Miss. 409, 17 So. 2d 604 (1944).
- 7 Cal.—*Fontana Land Co. v. Laughlin*, 199 Cal. 625, 250 P. 669, 48 A.L.R. 1308 (1926).

- 8 La.—*Lott v. Haley*, 370 So. 2d 521 (La. 1979).  
Wis.—*Swanke v. Oneida County*, 265 Wis. 92, 60 N.W.2d 756 (1953).  
9 U.S.—*McAllister v. Matlock*, 461 F. Supp. 518 (E.D. Tenn. 1978).  
10 N.C.—*Gulledge v. Seaboard Air Line Ry. Co.*, 147 N.C. 234, 60 S.E. 1134 (1908).  
11 Ala.—*Cronheim v. Loveman*, 225 Ala. 199, 142 So. 550 (1932).  
N.Y.—*People v. Grundy*, 218 A.D. 541, 218 N.Y.S. 420 (1st Dep't 1926).  
12 La.—*Tagliavore v. Ellerbe*, 149 So. 296 (La. Ct. App. 2d Cir. 1933).  
13 U.S.—*Standley v. U.S. Railroad Administration*, 271 F. 794 (N.D. Ohio 1920).

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## 16A C.J.S. Constitutional Law § 503

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### C. Vested Rights in Particular Remedies and Procedural Rules

## § 503. Vested rights in rules of evidence

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑2652

**There are no vested rights in mere rules of evidence, and such rules may be modified or abolished by the legislature provided a party is not deprived of the right to present his or her case or any other substantial right.**

No vested rights can exist in mere rules of evidence.<sup>1</sup> Accordingly, provided a party is not deprived of the right to present his or her side of the case,<sup>2</sup> or any other substantial right,<sup>3</sup> such rules may be adopted, modified, or abolished by the legislature even though the changes are made applicable to accrued or pending actions and may incidentally affect the rights of parties.<sup>4</sup>

Thus, a statute is valid which authorizes the admission of copies of documents where under the previous law only originals were admissible,<sup>5</sup> restricts or provides substitutes for the use of records,<sup>6</sup> permits an attorney's testimony concerning the preparation of a will,<sup>7</sup> or prescribes the proof essential to comply with the Statute of Frauds.<sup>8</sup> Furthermore, the validity of a statute has been upheld which makes hearsay evidence,<sup>9</sup> such as dying declarations, admissible in certain cases;<sup>10</sup> authorizes evidence to be heard in open court;<sup>11</sup> or authorizes the admission of deeds defectively executed or acknowledged.<sup>12</sup> The legislature cannot, however, under the pretense of making or changing a rule of evidence, deprive a party of a vested right in property.<sup>13</sup>

### *Witnesses.*

The legislature may incidentally affect pending actions by laws either admitting the testimony of witnesses formerly incompetent to testify<sup>14</sup> or excluding that of others previously competent.<sup>15</sup>

### *Presumptions and burdens of proof.*

The legislature does not disturb vested rights by the enactment or repeal of laws dispensing with proof in actions.<sup>16</sup> It may establish the requisites of prima facie evidence,<sup>17</sup> and establish, alter, or abolish rules as to presumptions, as long as it does not make presumptive evidence conclusive and preclude the adverse party from showing the truth.<sup>18</sup> It may likewise change existing rules as to burdens of proof,<sup>19</sup> as by shifting the burden of proof from one party to the other,<sup>20</sup> although a statute which does not merely change the burden of proof but also operates to impair vested property rights cannot be sustained.<sup>21</sup>

### *Weight and sufficiency.*

The legislature may not make evidence conclusive which is not so necessarily and thus deprive the opposite party of the opportunity of showing the truth.<sup>22</sup> However, the legislature may, in the form of a rule of evidence, enact what is really a statute of limitations by which certain evidence is to be conclusive as to certain facts after the lapse of a stated time.<sup>23</sup>

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### Footnotes

- 1 Ga.—*State v. Levins*, 234 Ga. App. 739, 507 S.E.2d 246 (1998).  
Ill.—*People v. Rodriguez*, 313 Ill. App. 3d 877, 246 Ill. Dec. 723, 730 N.E.2d 1188 (2d Dist. 2000).  
Neb.—*Howard Kool Chevrolet, Inc. v. Blomstedt*, 2 Neb. App. 493, 511 N.W.2d 222, 25 U.C.C. Rep. Serv. 2d 310 (1994).  
Okla.—*Polk v. Oklahoma Alcoholic Beverage Control Bd.*, 1966 OK 224, 420 P.2d 520 (Okla. 1966).
- 2 Ill.—*People v. Rodriguez*, 313 Ill. App. 3d 877, 246 Ill. Dec. 723, 730 N.E.2d 1188 (2d Dist. 2000).  
N.J.—*Langenohl v. Spearen, Preston & Burrows*, 22 N.J. Super. 392, 92 A.2d 75 (App. Div. 1952).  
N.Y.—*Application of Port of New York Authority*, 202 Misc. 1104, 118 N.Y.S.2d 11 (Sup 1952), order aff'd, 281 A.D. 818, 118 N.Y.S.2d 921 (1st Dep't 1953).
- 3 Ala.—*Griggs v. State*, 37 Ala. App. 605, 73 So. 2d 382 (1954).  
Ohio—*Simon v. St. Elizabeth Medical Center*, 3 Ohio Op. 3d 164, 355 N.E.2d 903 (C.P. 1976).
- 4 Ala.—*Griggs v. State*, 37 Ala. App. 605, 73 So. 2d 382 (1954).  
Ill.—*People v. Dolgin*, 415 Ill. 434, 114 N.E.2d 389 (1953).  
Md.—*Salsburg v. State*, 201 Md. 212, 94 A.2d 280 (1953), judgment aff'd, 346 U.S. 545, 74 S. Ct. 280, 98 L. Ed. 281 (1954).
- 5 Ill.—*People v. Dolgin*, 415 Ill. 434, 114 N.E.2d 389 (1953).
- 6 Ala.—*Miller-Brent Lumber Co. v. State*, 210 Ala. 30, 97 So. 97 (1923).  
N.J.—*Kozler v. New York Telephone Co.*, 93 N.J.L. 279, 108 A. 375 (N.J. Sup. Ct. 1919).
- 7 N.Y.—*In re Casper's Will*, 161 Misc. 199, 291 N.Y.S. 585 (Sur. Ct. 1936).
- 8 N.J.—*Kozler v. New York Telephone Co.*, 93 N.J.L. 279, 108 A. 375 (N.J. Sup. Ct. 1919).
- 9 N.Y.—*Application of Port of New York Authority*, 202 Misc. 1104, 118 N.Y.S.2d 11 (Sup 1952), order aff'd, 281 A.D. 818, 118 N.Y.S.2d 921 (1st Dep't 1953).
- 10 N.C.—*Williams v. Randolph & C. Ry. Co.*, 182 N.C. 267, 108 S.E. 915 (1921).
- 11 W. Va.—*Ferrell v. Deverick*, 85 W. Va. 1, 100 S.E. 850 (1919).
- 12 Tex.—*Sims v. Sealy*, 53 Tex. Civ. App. 518, 116 S.W. 630 (1909).

- 13 U.S.—*Downs v. Blount*, 170 F. 15 (C.C.A. 5th Cir. 1909).
- Cal.—*Morris v. Pacific Elec. Ry. Co.*, 2 Cal. 2d 764, 43 P.2d 276 (1935).
- 14 Ga.—*Morris v. Stanford*, 58 Ga. App. 726, 199 S.E. 773 (1938).
- N.Y.—*Commissioner of Public Welfare of City of New York, on Complaint of Gordon, v. Fagan*, 259 A.D. 727, 18 N.Y.S.2d 228 (2d Dep't 1940).
- Wash.—*State v. Clevenger*, 69 Wash. 2d 136, 417 P.2d 626 (1966).
- Application of judicial decision**
- Fla.—*Williams v. Long's Estate*, 338 So. 2d 563 (Fla. 1st DCA 1976).
- Witness competency statutes**
- Alterations in statutes which merely remove existing restrictions upon the competency of certain witness relate to modes of procedure only, and the retroactive application of such alterations do not amount to an unconstitutional ex post facto statute; there are no vested rights in modes of procedure.
- Ill.—*People v. Hart*, 214 Ill. App. 3d 512, 158 Ill. Dec. 103, 573 N.E.2d 1288 (1st Dist. 1991) (abrogated on other grounds by, *People v. Schott*, 145 Ill. 2d 188, 164 Ill. Dec. 127, 582 N.E.2d 690 (1991)).
- 15 N.J.—*Kozler v. New York Telephone Co.*, 93 N.J.L. 279, 108 A. 375 (N.J. Sup. Ct. 1919).
- 16 Tex.—*Sims v. Sealy*, 53 Tex. Civ. App. 518, 116 S.W. 630 (1909).
- 17 Kan.—*Jones v. Hickey*, 80 Kan. 109, 102 P. 247 (1909).
- N.J.—*Langenohl v. Spearen, Preston & Burrows*, 22 N.J. Super. 392, 92 A.2d 75 (App. Div. 1952).
- 18 Ariz.—*Matter of Schock's Estate*, 132 Ariz. 524, 647 P.2d 655 (Ct. App. Div. 2 1982).
- Tenn.—*Brewer v. Aetna Life Ins. Co.*, 490 S.W.2d 506 (Tenn. 1973).
- 19 Cal.—*In re Giordano's Estate*, 85 Cal. App. 2d 588, 193 P.2d 771 (4th Dist. 1948).
- Miss.—*Walters v. Blackledge*, 220 Miss. 485, 71 So. 2d 433 (1954).
- Wis.—*Berg v. Board of Regents of State Universities*, 40 Wis. 2d 657, 162 N.W.2d 653 (1968).
- 20 N.J.—*Langenohl v. Spearen, Preston & Burrows*, 22 N.J. Super. 392, 92 A.2d 75 (App. Div. 1952).
- Ohio—*Ohio Power Co. v. Diller*, 18 Ohio App. 2d 167, 47 Ohio Op. 2d 292, 247 N.E.2d 774 (3d Dist. Putnam County 1969).
- 21 Cal.—*In re Giordano's Estate*, 85 Cal. App. 2d 588, 193 P.2d 771 (4th Dist. 1948).
- 22 N.Y.—*Application of Port of New York Authority*, 202 Misc. 1104, 118 N.Y.S.2d 11 (Sup 1952), order aff'd, 281 A.D. 818, 118 N.Y.S.2d 921 (1st Dep't 1953).
- S.D.—*Harris v. Stearns*, 17 S.D. 439, 97 N.W. 361 (1903), on reh'g, 20 S.D. 622, 108 N.W. 247 (1906).
- 23 Md.—*Safe Deposit & Trust Co. of Baltimore v. Marburg*, 110 Md. 410, 72 A. 839 (1909).

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## 16A C.J.S. Constitutional Law § 504

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### C. Vested Rights in Particular Remedies and Procedural Rules

## § 504. Verdict, judgment, and execution; costs

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 2653, 2655

**The legislature may not by retroactive statute impair private rights adjudicated by a final judgment, nor may this be done by judicial decision; however, existing laws governing proceedings by which judgments may be enforced may generally be altered, and while there is authority to the contrary, a public right established by judgment may be annulled by subsequent legislation.**

A plaintiff has no vested rights in a lawsuit until a final judgment has been entered,<sup>1</sup> and a judgment becomes a vested right of property once it is no longer subject to review or modification.<sup>2</sup> The legislature may not by retroactive statute annul, set aside, or impair final judgments or rights therein adjudicated,<sup>3</sup> nor may this result be effected by judicial decision.<sup>4</sup> There can be no vested right in a verdict,<sup>5</sup> order, or judgment while it remains subject to the control of the court in which or by which it has been rendered<sup>6</sup> or while the order or judgment is subject to appellate review.<sup>7</sup>

There is no vested right in a method of procedure for entering,<sup>8</sup> vacating, modifying, or setting aside a judgment.<sup>9</sup> Existing laws governing proceedings by which judgments may be enforced may be altered or repealed so as to affect pending actions.<sup>10</sup> The right of a judgment creditor to institute supplementary proceedings or to issue execution on a judgment previously obtained is a

vested right which cannot be summarily taken away although the time of its exercise may be limited.<sup>11</sup> However, a retrospective statute may alter the law or procedure as to executions, redemption, and levies.<sup>12</sup>

Courts have held that a person cannot have a vested right in an injunction,<sup>13</sup> a modifiable decree,<sup>14</sup> or in a finding which is not a judgment.<sup>15</sup> A legislative enactment concerning matters not adjudicated in a judgment,<sup>16</sup> or which is not contrary to the judgment, does not disturb rights vested by the judgment.<sup>17</sup>

Earlier decisions may be overruled by a court without interfering with vested rights,<sup>18</sup> and where a judgment is reversed, there is no vested right in the procedure in force at the time when the judgment has been rendered.<sup>19</sup>

### **Costs.**

Statutes establishing costs and fixing court fees relate to remedy and procedure and do not impair or touch vested rights.<sup>20</sup>

## **CUMULATIVE SUPPLEMENT**

### **Cases:**

It is not within the power of a legislature to take away rights which have been once vested by a judgment. [International Paper Company v. County of Isle of Wight](#), 847 S.E.2d 507 (Va. 2020).

## **[END OF SUPPLEMENT]**

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### Footnotes

- 1 U.S.—[Stauffer v. Brooks Bros. Group, Inc.](#), 758 F.3d 1314 (Fed. Cir. 2014).
- 2 U.S.—[Ileto v. Glock, Inc.](#), 421 F. Supp. 2d 1274 (C.D. Cal. 2006), [aff'd](#), 565 F.3d 1126 (9th Cir. 2009).  
Ill.—[In re Marriage of Duggan](#), 376 Ill. App. 3d 725, 315 Ill. Dec. 811, 877 N.E.2d 1140 (2d Dist. 2007).
- 3 U.S.—[Adams v. Fidelity and Cas. Co. of New York](#), 147 F.R.D. 265 (S.D. Fla. 1993).  
Fla.—[Williams v. American Optical Corp.](#), 985 So. 2d 23, 41 A.L.R.6th 683 (Fla. 4th DCA 2008), [aff'd](#), 73 So. 3d 120 (Fla. 2011).  
Neb.—[Givens v. Anchor Packing, Inc.](#), 237 Neb. 565, 466 N.W.2d 771 (1991).  
N.J.—[Atlantic City Casino Ass'n v. City of Atlantic City](#), 217 N.J. Super. 277, 525 A.2d 1109 (App. Div. 1985).  
Tex.—[Trahan v. Trahan](#), 894 S.W.2d 113 (Tex. App. Austin 1995), writ denied, (Aug. 1, 1995).  
Va.—[Cinchfield Coal Co. v. Barton](#), 6 Va. App. 576, 371 S.E.2d 39 (1988).  
**Protected by due process**  
A litigant may have a vested right in a final judgment as such a judgment is a form of property that is protected by due process from destruction or impairment by subsequent retroactive legislation.  
Ill.—[In re Marriage of Duggan](#), 376 Ill. App. 3d 725, 315 Ill. Dec. 811, 877 N.E.2d 1140 (2d Dist. 2007).  
**Vested rights doctrine depends on existence of final judgment**  
U.S.—[Gavin v. Branstad](#), 122 F.3d 1081 (8th Cir. 1997).
- 4 Ill.—[Corey v. Corey](#), 343 Ill. App. 648, 99 N.E.2d 713 (1st Dist. 1951).  
Minn.—[Tankar Gas v. Lumbermen's Mut. Cas. Co.](#), 215 Minn. 265, 9 N.W.2d 754, 146 A.L.R. 1223 (1943).  
Pa.—[Trademens Nat. Bank & Trust Co. v. Floyd](#), 156 Pa. Super. 141, 39 A.2d 728 (1944).



- 5 Tex.—*Freedman Packing Co. v. Harris*, 160 S.W.2d 130 (Tex. Civ. App. Galveston 1942), writ refused w.o.m., (May 20, 1942).
- 6 N.Y.—*Jones v. Jones*, 51 Misc. 2d 610, 273 N.Y.S.2d 661 (Fam. Ct. 1966).  
Vt.—*Beaudry v. Beaudry*, 132 Vt. 53, 312 A.2d 922 (1973).  
Va.—*Fletcher v. Tarasidis*, 219 Va. 658, 250 S.E.2d 739 (1979).
- 7 Kan.—*Vaughn v. Nadel*, 228 Kan. 469, 618 P.2d 778 (1980).  
Va.—*Fletcher v. Tarasidis*, 219 Va. 658, 250 S.E.2d 739 (1979).  
Tex.—*Shelby Operating Co. v. City of Waskom*, 964 S.W.2d 75 (Tex. App. Texarkana 1997).
- 8 Cal.—*People v. Williams*, 24 Cal. 2d 848, 151 P.2d 244 (1944).  
Me.—*Dishon v. Oliver*, 402 A.2d 1292 (Me. 1979).
- 9 Mont.—*Scilley v. Red Lodge-Rosebud Irr. Dist.*, 83 Mont. 282, 272 P. 543 (1928).
- 10 Iowa—*Appleby v. Farmers State Bank of Dows*, 244 Iowa 288, 56 N.W.2d 917 (1953).  
N.Y.—*People ex rel. Wasserman v. Fagan*, 113 Misc. 255, 184 N.Y.S. 308 (Sup 1920).  
Va.—*Duffy v. Hartsock*, 187 Va. 406, 46 S.E.2d 570 (1948).
- 11 Ohio—*Lash v. Mann*, 141 Ohio St. 577, 26 Ohio Op. 158, 49 N.E.2d 689 (1943).  
Pa.—*Pennsylvania Co. for Insurances on Lives and Granting Annuities v. Scott*, 346 Pa. 13, 29 A.2d 328, 144 A.L.R. 849 (1942).

#### **Judgment creditors**

A final money judgment gives rise to a vested right which entitles the judgment creditor to the same constitutional due process protections afforded other forms of property.

- N.Y.—*County of Suffolk v. Long Island Lighting Co.*, 14 F. Supp. 2d 260 (E.D. N.Y. 1998).
- 12 Iowa—*Appleby v. Farmers State Bank of Dows*, 244 Iowa 288, 56 N.W.2d 917 (1953).
- 13 Fla.—*Jackson Grain Co. v. Lee*, 150 Fla. 232, 7 So. 2d 143 (1942).  
Or.—*State ex rel. Weingart v. Kiessenbeck*, 167 Or. 25, 114 P.2d 147 (1941).
- 14 U.S.—*Inmates of Suffolk County Jail v. Rouse*, 129 F.3d 649 (1st Cir. 1997).

#### **Prison litigation**

The provisions of the Prison Litigation Reform Act authorizing a court's termination of prospective relief in prison litigation did not violate the due process clause by infringing on the vested rights of inmates; prospective relief remained subject to modification.

- U.S.—*Ruiz v. U.S.*, 243 F.3d 941 (5th Cir. 2001).
- 15 Cal.—*Estate of Bose*, 77 Cal. App. 3d 269, 142 Cal. Rptr. 241 (1st Dist. 1978).  
Va.—*Calhoun v. Massie*, 123 Va. 673, 97 S.E. 576 (1918).
- 16 Ill.—*Weil-McLain Co. v. Collins*, 395 Ill. 503, 71 N.E.2d 91 (1946).  
Ind.—*Board of Com'rs of Wabash County v. Workman*, 186 Ind. 280, 116 N.E. 83 (1917).
- 17 N.Y.—*Moufang v. State*, 295 N.Y. 121, 65 N.E.2d 321 (1946).  
Utah—*Caldwell v. Erickson*, 61 Utah 265, 213 P. 182 (1923).
- 18 U.S.—*Willoughby v. City of Chicago*, 235 U.S. 45, 35 S. Ct. 23, 59 L. Ed. 123 (1914).  
Ga.—*Department of Transp. v. Ross*, 152 Ga. App. 433, 263 S.E.2d 208 (1979).  
N.C.—*State v. Rivens*, 299 N.C. 385, 261 S.E.2d 867 (1980).
- 19 Wis.—*Jilek v. Zahl*, 162 Wis. 157, 155 N.W. 909 (1916).

As to vested rights in procedure, generally, see § 500.

- 20 Cal.—*Cain v. French*, 29 Cal. App. 725, 156 P. 518 (1st Dist. 1916).  
Mass.—*Hollingsworth & Vose Co. v. Recorder of Land Court*, 262 Mass. 45, 159 N.E. 543 (1928).

#### **No vested interest in avoiding payment for attorney's fees**

U.S.—*Capello v. District of Columbia Bd. of Educ.*, 669 F. Supp. 14, 42 Ed. Law Rep. 103 (D.D.C. 1987).

## 16A C.J.S. Constitutional Law § 505

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### Constitutional Law

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### PART II. Vested Rights and Retroactive Legislation

#### V. Vested Rights

##### C. Vested Rights in Particular Remedies and Procedural Rules

## § 505. Appeal or other proceedings for review

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑2654

**The legislature may not grant an appeal or other method of review in a case where there has been a final judgment and no right of appeal exists.**

Under the Fourteenth Amendment to the Constitution of the United States and the constitutions of the several states, the legislature may not grant an appeal or other method of review in a case in which there has been a final judgment and no right of appeal exists under the law in force prior to the enactment of the statute.<sup>1</sup> The bar arising from the lapse of time within which an appeal may be taken is a vested right and cannot be affected by subsequent legislation.<sup>2</sup> A statute allowing an appeal from an arbitrator's decision, where none previously existed, which becomes effective prior to the determination of the case in the trial court, is fully effective to allow the appeal.<sup>3</sup>

Although in some cases the right of a party, under existing law, to have his or her case reviewed has been found to be a vested right which may not be taken away,<sup>4</sup> the general rule is that a party can acquire no vested right to an appeal or other proceeding for review; it is a mere matter of further or additional remedy, which may accordingly be taken away by statute<sup>5</sup> or constitutional amendment.<sup>6</sup>

Matters of appellate procedure, like other questions of procedure, are within the control of the legislature and may be regulated by statutes applicable to pending proceedings.<sup>7</sup> Apart from statutory or constitutional authorization, the courts themselves may change judicially established rules of appellate procedure without impairing vested rights.<sup>8</sup> The legislature does not deprive a litigant of vested rights by requiring an appeal to be made within a specified time,<sup>9</sup> but the time allowed for an appeal cannot be reduced by legislative enactment after judgment.<sup>10</sup>

In the absence of a constitutional guaranty, a party to a suit has no vested right of appeal from one appellate court to another,<sup>11</sup> and there exists no vested right to have one's case reviewed in any particular appellate court.<sup>12</sup> Accordingly, pending actions may be transferred by law from one court of appeals to another.<sup>13</sup>

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#### Footnotes

- 1 Minn.—*Johnson v. Jefferson*, 191 Minn. 631, 255 N.W. 87 (1934).  
R.I.—*Fuller v. Fuller*, 49 R.I. 45, 139 A. 662 (1927).
- 2 Va.—*Kennedy Coal Corp. v. Buckhorn Coal Corp.*, 140 Va. 37, 124 S.E. 482 (1924).  
**Extension of time for appeal**  
N.J.—*Oliver v. Oliver*, 127 N.J. Eq. 367, 13 A.2d 310 (Ct. Err. & App. 1940).
- 3 Ga.—*Muscogee County Bd. of Tax Assessors v. Alexander Bros. Lumber Co.*, 121 Ga. App. 800, 175 S.E.2d 919 (1970).
- 4 Pa.—*Com. v. Luckey*, 31 Pa. Super. 441, 1906 WL 3789 (1906).  
**Vested right not affected by new rules**  
Ky.—*Shely v. Votaw*, 272 S.W.2d 462 (Ky. 1954).
- 5 Kan.—*In re Powell*, 167 Kan. 283, 205 P.2d 1193 (1949).  
N.J.—*Shade v. Colgate*, 3 N.J. 91, 69 A.2d 19 (1949).  
Or.—*In re Wells' Estate*, 187 Or. 462, 212 P.2d 729 (1949).  
**Administrative orders**  
Conn.—*State v. Vachon*, 140 Conn. 478, 101 A.2d 509 (1953).
- 6 Ga.—*Griffin v. Sisson*, 146 Ga. 661, 92 S.E. 278 (1917).  
N.J.—*Shade v. Colgate*, 3 N.J. 91, 69 A.2d 19 (1949).
- 7 Kan.—*In re Powell*, 167 Kan. 283, 205 P.2d 1193 (1949).  
Or.—*In re Wells' Estate*, 187 Or. 462, 212 P.2d 729 (1949).  
Tenn.—*National Life & Acc. Ins. Co. v. Atwood*, 29 Tenn. App. 141, 194 S.W.2d 350 (1946).  
**Review of administrative decision**  
Cal.—*Department of Alcoholic Beverage Control v. Superior Court, City and County of San Francisco*, 268 Cal. App. 2d 7, 73 Cal. Rptr. 671 (1st Dist. 1968).  
As to vested rights in procedural matters, generally, see § 500.
- 8 Cal.—*Wennerholm v. Stanford University School of Medicine*, 20 Cal. 2d 713, 128 P.2d 522, 141 A.L.R. 1358 (1942).
- 9 La.—*In re Aztec Land Co.*, 147 La. 672, 85 So. 634 (1920).
- 10 Iowa—*Davis v. Robinson*, 200 Iowa 840, 205 N.W. 520 (1925).  
Ky.—*Shely v. Votaw*, 272 S.W.2d 462 (Ky. 1954).
- 11 N.J.—*Shade v. Colgate*, 3 N.J. 91, 69 A.2d 19 (1949).
- 12 Colo.—*People ex rel. Griffith v. Scott*, 52 Colo. 59, 120 P. 126 (1911).  
Wis.—*Elm Park Iowa, Inc. v. Denniston*, 91 Wis. 2d 227, 280 N.W.2d 262 (1979).  
**Review of agency action**  
D.C.—*First Nat. Bank of Scotia v. U.S.*, 530 F. Supp. 162 (D.D.C. 1982).
- 13 N.J.—*Shade v. Colgate*, 3 N.J. 91, 69 A.2d 19 (1949).  
Wis.—*Elm Park Iowa, Inc. v. Denniston*, 91 Wis. 2d 227, 280 N.W.2d 262 (1979).

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